TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 210.

THE COUNTY OF BATES, PLAINTIFF IN ERROR,

vs.

JONATHAN WINTERS AND VALENTINE WINTERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 14, 1875.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of [SEAL.] Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the April term, 1875, thereof, between Jonathan Winters and Valentine Winters, plaintiffs, and The County of Bates, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said County of Bates, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D.C., on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, dated as as aforesaid.

H. C. GEISBERG,
Clerk C. C. U. S., West. Dist. Mo.

Allowed by—

A. KREKEL, *Judge.*

2 UNITED STATES OF AMERICA,
Western District of Missouri, sct:

In obedience to the within writ of error, I herewith transmit to the Supreme Court of the United States a certified transcript of the record and proceedings in the within-entitled cause, together with all things concerning the same.

In witness whereof I hereunto subscribe my name at office, in the city of Jefferson, in said district, this third day of September, A. D. 1875.

H. C. GEISBERG,
Clerk U. S. Cir. Court, W. Dist. Mo.

(Indorsed:) United States circuit court, western district of Missouri. Jonathan Winters & al., d. e., vs. County of Bates, p. e. Writ of error to the circuit court of the United States for the western district of Missouri. Returned and filed , 187 . , clerk.

3 The United States of America to Jonathan Winters and Valentine Winters, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western

district of Missouri, wherein the County of Bates, in the State of Missouri, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, judge of the circuit court of the United States for the western district of Missouri, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-five.

A. KREKEL,
Judge United States Circuit Court, Western District of Missouri.

4 We acknowledge service of the within citation this 21st day of August, 1875.

JONATHAN WINTERS AND
VALENTINE WINTERS.

By their attorney,

T. K. SKINKER.

(Indorsed:) United States circuit court, western district of Missouri. Jonathan Winters & al., d. e., vs. County of Bates, p. e. Citation. Filed Aug. 24, '875. H. C. Geisberg, clerk.

5 UNITED STATES OF AMERICA,
Western District of Missouri:

Pleas before the honorable circuit court of the United States for the western district of Missouri, at the April term thereof, 1875, in case of—

VALENTINE WINTERS AND JONATHAN H. Winters, plaintiffs,
vs.
THE COUNTY OF BATES, IN THE STATE OF Missouri, defendant.

Be it remembered that heretofore, to wit, on the 22d day of March, A. D. 1873, there was filed in the clerk's office in said circuit court a petition, in words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Western District of Missouri:

In the United States circuit court for said district, April term, 1873.

VALENTINE WINTERS AND JONATHAN H. Winters, plaintiffs,
vs.
BATES COUNTY, DEFENDANT.

6 The plaintiffs, Valentine Winters and Jonathan H. Winters, copartners under the name of V. Winters & Son, and citizens of the State of Ohio, complain of the defendant, Bates County, in the State of Missouri,

7, 8 And state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory, called

bond numbered 56, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company or bearer the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri, entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they

were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

9, 10 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory, called bond numbered 57, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company or bearer the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1866, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri, entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and

under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

11, 12 And for another and further cause of action, plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory, called bond numbered 58, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company or bearer the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions

of the act of the general assembly of the State of Missouri, entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1882, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon and for four per cent. damages upon said coupon, and for costs.

13, 14 And for another and further cause of action, plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 59, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company or bearer the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other

company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake, and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not nor has since been paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from maturity of said coupon and for four per cent. damages upon said coupon, and for costs.

15, 16 And for another and further cause of action, plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 60, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company or bearer the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax payers, and residents of said township of M't Pleasant, did petition said court, setting forth their desire, as a township, to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th

day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri, entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not nor has since been paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon and for four per cent. damages upon said coupon, and for costs.

17, 18 And for another and further cause of action the plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond numbered 61, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and

State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per cent. per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that the said company was at the said several dates a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the law of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies, and the provisions of the act of the general assembly of the State of Missouri, entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof, as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

19, 20 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond numbered 64, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons af interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the law of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri and known as the Pleasant Hill Division of the Lexing on, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri, entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof, as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety-thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant

promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

21,22 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory, called bond numbered 65, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe, and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof, as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

23, 24 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond numbered 66, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was at the said several dates a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies at a meeting of the stock-

holders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri, entitled "An act to amend chapter 63 of the general statutes of railroad companies so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof, as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

25, 26 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 67, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was at the said several dates a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into

through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof, as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars on behalf of said township to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to the bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

27, 28 And for another and further cause of action, plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 68, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of

, 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

29, 30 And for another and further cause of action, plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its writing obligatory called bond, numbered 69, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and

sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state for the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and

payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

31, 32 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 70, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorported under the laws of the State of Missouri; and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lex-

ington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

33, 34 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 75, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad

companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

35, 36 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 76, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 . twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chilicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri,

and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

37, 38 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant by its certain writing obligatory called bond, numbered 77, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company, or bearer, the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said

township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was among others issued by said court in payment of said subscription.

Plaintiffs further state that among the coupons of interest to said bond attached as aforesaid was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not, nor has since been, paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon, and for four per cent. damages upon said coupon, and for costs.

39, 40 And for another and further cause of action plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 78, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of Mt Pleasant Township, in said county, promised to pay to said company or bearer the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon

from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state, that among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was, at maturity, presented at said bank for payment, and payment was requested, yet it was not nor has since been paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon and for four per cent. damages upon said coupon, and for costs.

41, 42 And for another and further cause of action, plaintiffs state that heretofore, to wit, on the 18th day of January, 1871, the said

defendant, by its certain writing obligatory called bond, numbered 79, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company or bearer the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose; and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies, by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th of January, 1872, at the bank

aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not nor has since been paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon and for four per cent. damages upon said coupon, and for costs.

43, 44 And for another and further cause of action, plaintiffs state that, heretofore, to wit, on the 18th day of January, 1871, the said defendant, by its certain writing obligatory called bond, numbered 80, signed by B. H. Thornton, the then presiding justice of the county court of said county, attested by W. J. Smith, the then clerk, and sealed with the seal of said court, bearing date said day and year, acknowledged itself to be indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company; and for and in behalf of M't Pleasant Township, in said county, promised to pay to said company or bearer the sum of one thousand dollars, at the Bank of America, in the city and State of New York, on the 18th day of January, 1886, together with interest thereon from the said 18th day of January, 1871, at the rate of ten per centum per annum, on presentation and delivery at said bank of certain coupons of interest thereto attached.

Plaintiffs further state that heretofore, to wit, on the day of , 187 , twenty-five persons, tax-payers and residents of said township of M't Pleasant, did petition said court, setting forth their desire as a township to subscribe the sum of ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon the said court did, on the 5th day of April, 1870, order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said company was, at the said several dates, a corporation duly incorporated under the laws of the State of Missouri, and was building and proposing to build its road into, through, and near said township; that said election was held as ordered, and two-thirds of the qualified voters of said township voting thereat voted in favor of said subscription.

Plaintiffs further state that afterwards, to wit, on the 4th day of October, 1870, the said company was consolidated with a certain other company, duly incorporated under the laws of the State of Missouri and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies, at a meeting of the stockholders of said two several companies regularly called for that purpose, and had been approved in writing by the persons holding and representing a majority of the stock in each of the said several companies; and the provisions of the act of the general assembly of the State of Missouri entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870, had been first accepted by each of said companies by filing with the secretary of state of the State of Missouri a resolution accepting the provisions thereof as required by law.

Plaintiffs further state that afterwards, to wit, on the 18th day of January, 1871, said court did, in pursuance of the authority conferred upon it by the vote of the people of said township, as above set forth, and under the said terms and conditions of consolidation, subscribe the said sum of ninety thousand dollars, on behalf of said township, to said Lexington, Lake and Gulf Railroad Company; and that said bond was, among others, issued by said court in payment of said subscription.

Plaintiffs further state that, among the coupons of interest to said bond attached, as aforesaid, was a certain coupon, which is herewith filed, bearing date the day and year first aforesaid, whereby defendant promised to pay to bearer, on the 18th day of January, 1872, at the bank aforesaid, the sum of one hundred dollars, being one year's interest then to be due on said bond; that before and at maturity of said coupon they were and now are the holders for value of the same; that although said coupon was at maturity presented at said bank for payment, and payment was requested, yet it was not nor has since been paid, but remains now due and wholly unpaid; wherefore plaintiffs pray judgment for said sum of one hundred dollars, with interest thereon from the maturity of said coupon and for four per cent. damages upon said coupon, and for costs.

W. B. NAPTON,
T. K. SKINKER,
Att'ys for Plaintiffs.

45 And afterward, on the 24th day of March, 1875, there was issued out of the clerk's office of the said circuit court the following summons, to wit:

Summons.

WESTERN DISTRICT OF MISSOURI, *sct.*:

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon Bates County, in the State of Missouri, and a citizen of said district, that it be and appear before the honorable circuit court of the United States for the western district of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the 21st of April next, then and there to answer the complaint of Valentine Winters and Jonathan H. Winterss, copartners under the name of V. Winters & Son, and citizens of the State of Ohio, as set forth in the petition filed in said court on the 22d day of March, A. D. eighteen hundred and seventy-three.

Hereof fail not, and have you then and there this writ.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, the 24th day of March, A. D. eighteen hundred and seventy-three. Issued at office, in the city of Jefferson,
46 under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] ALFRED S. KREKEL,
Clerk of said Court.

Upon said summons the marshal of the United States for the western district of Missouri made the following return, to wit:

Return of marshal.

I hereby certify that I executed the within writ by delivering personally a true copy of the petition and summons in the within cause to W. J. Smith, clerk of the county court of Bates County, Mo.

Done this 26th day of March, 1873, in the county of Bates and western district of Mo.

GEO. SMITH,
U. S. Marshal.

And afterward, at the April term, 1873, of the said circuit court, and on the 21st day of April, 1873, the following proceedings were had, to wit:

V. WINTERS & J. WINTERS
vs.
BATES COUNTY, MO. } No. 112.

And now comes the defendant, by Mess'rs C. C. Bassett and
47 Glover and Shepley, and file a demurrer to plaintiffs' petition.

Demurrer filed.

The demurrer filed as aforesaid is in words and figures following, to wit:

In the circuit court of the United States for the western district of Missouri.

VALENTINE WINTERS & JONATHAN WINTERS,
plaintiffs,
vs.
BATES COUNTY, DEFENDANT.

Demurrer to petition.

And now comes the said defendant and demurs to the petition filed in this cause, in that the said petition does not state facts sufficient to constitute a cause of action, and for grounds of such demurrer state:

First. That it appears from the averments of said petition that the county court of Bates County had no right and no authority in law to make a subscription to the capital stock of the Lexington, Lake & Gulf Railroad Company.

Second. That it appears from said petition that the question of making such subscription to the said Lexington, Lake & Gulf Railroad Company was never submitted to the vote of the people of said Mount Pleasant Township.

48 Third. That it appears from said petition that the bonds, the coupons upon which are the causes of action in this suit set forth, were not issued in conformity to any law, but were unauthorized and illegal.

Fourth. That the action of the county court of Bates County in making any subscription, such as is set forth in said petition, or issuing the bonds therein named or the coupons sued on, is shown by the petition to have been without warrant of law, and such subscription bonds and coupons were utterly void.

BASSETT, GLOVER & SHEPLEY,
For Def't.

And as a further ground of demurrer the defendant alledges the following:

Because it fully appears from said petition that the several writings obligatory in the second count of said petition mentioned were not and are not, nor either of them, the bonds of defendant, or in any manner binding upon defendant; but that the same, and each of them, were and are the bonds of Mount Pleasant Township in said county, and only binding upon said township; the said coupons sued on, and each of them, are not obligations of defendant or binding upon defendant, but
49 are only the obligations of said township, and binding upon said township only.

And afterward, at the said April term of said circuit court, and on the 1st day of May, 1873, the following proceedings were had, to wit:

Amendments to petition filed.—Demurrer submitted.

VALENTINE WINTERS ET AL. } No. 112.
vs.
BATES COUNTY.

This day come the parties, the plaintiff by Mess'rs Napton & Skinker, and the defendant by his attorneys, Mess'rs Glover, Shepley & Bassett, when, on the motion of plaintiff, it is ordered by the court that the said plaintiff have leave to file amendments to his petition, which amendments are now filed; and thereupon the demurrer heretofore filed to plaintiff's petition is submitted to the court.

The amendments to the petition filed as aforesaid are in words and figures following, to wit:

Amendments to petition.

V. WINTERS ET AL. } No. 112.
vs.
BATES COUNTY.

On motion of plaintiffs' counsel, it is ordered that the several
50 counts of the petition be amended as follows:

By interlining in the 22d line between the words "incorporated" and "under," the words "on the 18th day of July, 1870."

Also by erasing in the 24th & 25th, 42d & 43d lines the words "although said coupon was at maturity presented at said bank for payment, & payment was requested."

NAPTON & SKINKER.

And afterward, in vacation, and on the 22d day of May, 1873, the following proceedings were had, to wit:

Briefs filed.

VALENTINE WINTERS ET AL. } No. 112.
vs.
BATES COUNTY.

The briefs filed by plaintiff in G. W. Harshman vs. Bates County, No. 111, are also to apply to this case.

And afterward, at the November term, 1873, of said circuit, begun and held at Jefferson City on the 17th day of November, 1873, and on the 21st day of November, the following proceedings were had, to wit:

Amended petition filed.—Stipulation in other case to apply, &c

VALENTINE WINTERS AND JONATHAN WINTERS
vs.
BATES COUNTY. } No. 112.

51 And now come the plaintiffs and file amended petition, and it is ordered by the court that the stipulations filed in the case of G. W. Harshman *vs.* Bates County shall also apply to this cause, as per order of this court therein set forth.

And it is further ordered, that the clerk of this court file with the papers herein a copy of said stipulation.

The copy of the stipulation filed, as ordered in the foregoing, is in words and figures following, to wit:

Stipulation.

G. W. HARSHMAN
vs.
BATES COUNTY.

It is agreed by and between the respective parties, by their attorneys, that that portion of the 1st count of the petition as amended which begins with the words "Plaintiffs state that said Lexington, Chillicothe & Gulf R. R. Co. was by the terms of its charter to commence," and ends with the words, "the distance between said town of Butler & said city of Lexington is eighty-three miles," shall be taken & considered as a portion of each succeeding count in said petition, & as a portion of each count in the petitions in the several cases of V. Winters et
52 al. *vs.* Bates Co., No. 112; J. H. Winters *vs.* Bates Co., No. 114; V. Winters *vs.* Bates Co., No. 115, and that each of said counts in all of said several petitions be considered as amended by the addition of such portion of said count above described.

T. K. SKINKER, *Att'y for Plaintiff.*
C. C. BASSETT, *Att'y for Def't.*

True copy. Attest:
M. M. PRICE, *Clerk.*

And afterward, at the November term, 1874, of the said circuit court, and on the 16th day of November, 1874, the following proceedings were had, to wit:

Amended petition filed.

VALENTINE WINTERS ET AL.
vs.
BATES COUNTY. } No. 112.

Now come the plaintiffs, by their attorney, T. K. Skinker, and by leave of court files amended petition.

The above-mentioned amended petition is in words and figures following, to wit:

Amended petition.

In the circuit court of the United States in & for the western district of Missouri, November term, 1874.

53 VALENTINE WINTERS AND JONATHAN H. Winters, plaintiffs,
vs.
BATES COUNTY, DEFENDANT.
} Amended petition.

Now come the plaintiffs and, by leave of court, file this their amended petition, and state that they are citizens of the State of Ohio, and that defendant is a county existing in and by virtue of the laws of the State of Missouri; that heretofore, to wit, on the 5th day of April, 1870, twenty five persons, tax-payers and residents of M't Pleasant Township, in Bates County, did petition the county court of said county, setting forth their desire, as a township, to subscribe to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof.

Thereupon said court did order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to said company; that said election was held as ordered, and two-thirds of the qualified voters of said township, who voted thereat, voted in favor of such subscription and of such issuing of bonds; that said company was at said several dates a corporation existing under and by virtue of the laws of the State of Missouri.

54 That afterwards, to wit, on the 14th day of June, 1870, said subscription was made by said court to the capital stock of said company, and afterwards, to wit, on the 17th day of June, 1870, the same was accepted by said company.

That afterwards, to wit, on the 4th day of October, 1870, said company was consolidated with a certain other company, incorporated on the 18th day of July, 1870, under and by virtue of the laws of said State, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company.

That a properly-certified copy of the articles of agreement evidencing such consolidation and declaring the corporate name of the consolidated company to be the Lexington, Lake & Gulf Railroad Company was on that day filed with the secretary of state, a copy of which is hereto attached, marked "Exhibit 5," and made a part of this petition. (For copy see page 104.)

That the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies as required by law, and each of said companies had filed with the secretary of state of the State of Missouri its acceptance

55 of the provisions of an act of the general assembly of said State, entitled "An act to amend chapter 63 of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870.

That the terms and conditions of said consolidation were such that said Lexington, Lake and Gulf Railroad Company became entitled to have, demand, sue for, recover, and receive the said subscription and the bonds to be issued in payment thereof; that on the 18th day of January, 1871, said county court did cause said bonds to be executed and issued, and did cause said subscription to be made and transferred

to said Lexington, Lake and Gulf Railroad Company; that among the bonds thus executed and issued was a certain bond in words and figures following, to wit:

Bond sued on.

No. 56.] UNITED STATES OF AMERICA. [$1,000.

State of Missouri, county of Bates.

Issued pursuant to articles of consolidation in payment of stock due the Lexington, Lake and Gulf Railroad Company, consolidated October 4th, A. D. 1870.

Know all men by these presents that the county of Bates, in the
56 State of Missouri, acknowledges itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, in the sum of one thousand dollars, which sum the said county of Bates, for and in behalf of M't Pleasant Township therein, promises to pay the said Lexington, Lake and Gulf Railroad Company or bearer, at the Bank of America, in the city and State of New York, on the 18th day of January, A. D. 1886, together with interest thereon from the 18th day of January, A. D. 1871, at the rate of ten per cent. per annum, which interest shall be payable annually on the presentation and delivery at said Bank of America of the coupons hereto attached.

This bond being issued under and pursuant to an order of the county court of Bates County, by virtue of an act of the general assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people, taken May 3d, 1870, as required by law, upon the proposition to subscribe ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and which said railroad company last aforesaid and the former, Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad
57 Company, were, on the 4th day of October, 1870, consolidated, as required by law, into one company, under the name of the Lexington, Lake and Gulf Railroad Company; and which said last-named railroad company, as provided by law and under the terms of said consolidation thereof, possesses all the powers, rights, and privileges, and owns and controls all the assets, subscription bonds, moneys, and properties whatever of the two said several companies forming said consolidation, or either one of them.

In testimony whereof the said county of Bates has executed this bond by the presiding justice of the county court of said county under the order thereof signing his name hereto, and by the clerk of said court under the order thereof attesting the same and affixing the seal of said court.

This done at the city of Butler, county of Bates, this eighteenth day of January, A. D. 1871.

{ COUNTY COURT, BATES COUNTY, MO., SEAL. }

B. H. THORNTON,
Presiding Justice of the County Court of Bates County, Mo.

Attest:
W. J. SMITH,
Clerk of the County Court of Bates County, Mo.

That said bond was signed by one, B. H. Thornton, then presiding justice of said county court, and was attested by one W. J. Smith,

58 then clerk of said court, with the seal of said court affixed; that attached to said bond was a certain coupon in words and figures following:

Coupon sued on.

$100.] BUTLER, BATES COUNTY, MO. [$100.

January 18th, A. D. 1871.

The county of Bates acknowledges to owe the sum of one hundred dollars, payable to bearer, on the eighteenth day of January, 1872, at the Bank of America, in the city & State of New York, for one year's interest on bond No. 56.

W. J. SMITH,
Clerk of the County Court, Bates County, Mo.

That at the maturity of said coupon plaintiffs were bearers and holders thereof; that said coupon bears interest at the rate of seven per cent. per annum from maturity; that it is now due and remains wholly unpaid.

Wherefore plaintiffs pray judgment for the sum of one hundred dollars with interest at the rate of seven per cent. per annum from the 18th day of January, 1872, and for costs.

T. K. SKINKER,
Attorney for Plaintiffs.

59 And afterward, at the same November term of said circuit court, and on the 17th day of November, 1874, the following proceedings were had, to wit:

Stipulation filed; leave to plead, &c.

VALENTINE WINTERS ET AL.
vs.
BATES COUNTY. } No. 112.

Now come the plaintiffs by T. K. Skinker, their attorney, and the defendant by C. C. Boone, and file stipulation relative to pleadings; and it is thereupon ordered that this cause be continued until the next term thereof, subject to trial by consent of parties, and leave granted to answer amended petition in thirty days, and replication to be filed in sixty days, and case now continued.

The stipulation filed as above mentioned is in words and figures following, to wit:

Stipulation.

VALENTINE WINTERS AND JONATHAN H. Winters
vs.
BATES COUNTY.

It is hereby stipulated and agreed by & between the plaintiffs & defendants by their respective counsel that *that* the amended petition or count herein filed shall be held and considered to embrace eighteen
60 other counts, all similar to the first count, being counts upon the same coupons declared upon in the original petition herein; and that any and every pleading to said first count or to the answer thereto, or to the reply to such answer, should any such be hereafter filed, shall

be held and considered as a pleading to each and all the said counts, or the answers to said counts, or the replies to said answers, to the end that all the pleadings in the case shall consist of said first count and the pleadings consequent upon it.

T. K. SKINKER,
Att'y for Plaintiffs.
C. C. BASSETT,
Att'y for Def't.

And afterward, in vacation, and on the 15th day of December, 1874, there was filed in the clerk's office of the said circuit court, by defendant's attorney, C. C. Bassett, the following answer, in words and figures, to wit:

Answer to amended petition.

In the circuit court of the United States for the western district of Missouri.

VALENTINE WINTERS AND JONATHAN H. Winters, plaintiffs,
vs.
BATES COUNTY, DEFENDANT.

61 The defendant comes and for answer to the amended petition filed by the plaintiffs says that it is true, as stated in the said petition, that heretofore, to wit, on the 5th day of April, 1870, twenty-five persons, tax-payers and residents of Mount Pleasant Township, in Bates County, did petition the county court of said county, setting forth their desire as a township to subscribe to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof, and that thereupon said court did order an election to be held in said township on the 3d day of May, 1870, to determine if such subscription should be made to the said company; that said election was held as ordered, and that two-thirds of the qualified voters of said township who voted thereon voted in favor of the said subscription, and that said company at said several dates was a corporation existing under and by virtue of the laws of the State of Missouri.

Defendant denies, however, that afterwards, on the 14th day of June, 1870, said subscription was made by the said court to the capital stock of the said company, and that afterwards, on the 17th day of June, 1870, the same was accepted by the said company.

62 Defendant denies that afterwards, on the 4th day of October, 1870, said company was consolidated with a certain other company incorporated on the 18th day of July, 1870, under and by virtue of the laws of the State of Missouri, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all stock held in each of said companies as required by law.

And denies that each of said companies had filed with the secretary of state of the State of Missouri its acceptance of the provisions of an act of the general assembly of the State of Missouri entitled "An act amend chapter 63, of the general statutes of railroad companies, so as to authorize the construction, leasing, and extension of railroads," approved March 24th, 1870.

Defendant denies that the terms and conditions of said consolidation were such that said Lexington, Lake and Gulf Railroad Company became entitled to have, demand, sue for, recover, and receive the said subscription and the bonds to be issued in payment thereof.

63 Defendant says that the two said companies could not legally consolidate under the law, because the said consolidation deprived the public of the benefit of competition between the two said roads.

Defendant admits that the said county court did, on the 18th day of January, 1871, cause said subscription to be made to the said Lexington, Lake and Gulf Railroad Company, and caused said bonds to be executed and issued to said company, but the defendant denies that the said county court caused said subscription to be transferred to said Lexington, Lake and Gulf Railroad Company, as stated in the said petition.

Defendant admits that among the bonds executed and issued as aforesaid was a certain bond described and copied in the said petition, and that said bond was signed and attested as therein stated, and attached thereto was a coupon in the words and figures stated in the said petition.

But the defendant further answering says, that the said county court of Bates County had no lawful power and authority whatever to make said subscription to the said Lexington, Lake and Gulf Railroad Company, or to execute and issue the said bonds to the said company

64 by virtue and in pursuance with the vote of the township aforesaid, or in any manner otherwise.

And the defendant now here claims that the plaintiffs, upon the coupons attached to the said bond, have no action or legal demand whatever against the defendant, or in any manner otherwise.

And the defendant therefore asks to go hence, with its cost in this behalf laid out and expended.

C. C. BASSETT,
Att'y for Def't.

And afterward, at the April term, 1875, of said circuit court, and on the 19th day of April, 1875, the following proceedings were had, to wit:

Amen'd answer filed.

VALENTINE & J. H. WINTERS
vs.
BATES COUNTY. } No. 112.

Now comes the defendant, by C. C. Bassett, its attorney, and by consent, files amended answer herein.

Said amended answer is in words and figures following, to wit:

In the circuit court of the United States for the western district of Missouri.

65 VALENTINE WINTERS AND JONATHAN Winters, plaintiff',
against
BATES COUNTY, DEFENDANT.

Amended answer.

Defendant, for amended answer to the amended petition filed by the plaintiffs, says:

That it is not true that, on the 14th day of June, 1870, the subscription

alluded to in the said petition was made by the county court of Bates County to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and that afterwards, on the 17th day of June, 1870, the same was accepted by the said company.

Defendant denies that any subscription whatever was ever made at any time by the county court of Bates County to the capital stock of the said Lexington, Chillicothe and Gulf Railroad Company, or accepted by the said company;

But states the facts to be, that long after the said alleged and pretended consolidation of the Lexington, Chillicothe and Gulf Railroad Company with the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as stated in the said petition, to
66 wit, on the 18th day of January, 1871, the said Bates County court caused the said subscription, so voted by the inhabitants of Mount Pleasant Township to the Lexington, Chillicothe and Gulf Railroad Company, to be made to the capital stock of the said consolidated railroad company, the Lexington, Lake and Gulf Railroad Company, and the same was then and there accepted by the said company, and the bonds here sued on and the coupons attached thereto were then and there issued to the said alleged consolidated railroad company.

And the defendant says that the said county court had no lawful power or authority whatever to make such subscription or to issue said bonds, and the same were issued and delivered without authority of law, and are now void in the hands of plaintiffs as against the defendant.

Defendant denies that, on the 4th day of October, 1870, the said Lexington, Chillicothe and Gulf Railroad Company was legally consolidated with the said Pleasant Hill Division thereof; [23] and states the fact to be that no meeting of the stockholders of the said Lexington, Chillicothe and Gulf Railroad Company was ever regularly called for the
67 purpose of making such consolidation, as required by law, nor was any notice whatever given to the stockholders of said company, or the directors thereof, residing in Bates County or Mount Pleasant Township, of any such meeting, as required by law, nor did any of the said stockholders or directors appear or participate in any such meeting, nor was the stock so voted by the inhabitants of Mount Pleasant Township in any manner represented in any such meeting, [15.]

Defendant denies that the terms and conditions of the said pretended consolidation were such that the said Lexington, Lake and Gulf Railroad Company became entitled to have, demand, sue for, recover, and receive the said subscription and the bonds to be issued in pursuance thereof.

[26.] Defendant says that any such consolidation was illegal and void in law, because the result of the said consolidation would be to deprive the public of the benefit of competition between the said roads, contrary to the statutes in such case made and provided. [6]

Defendant admits that on the 18th day of January, 1871, the county court of Bates County did cause said bonds to be executed and
68 issued, and did cause said subscription to be made to said Lexington, Lake and Gulf Railroad Company, and among the bonds thus executed and issued was a certain bond as described in the said petition.

But the defendant denies that any transfer of said subscription was made by the said Bates County court, for the reason that no such subscription had ever been made by the said court prior to the said 18th day of January, 1871; [26] nor had any certificate of stock at any time

prior thereto been issued, tendered, or delivered to the said court in behalf of said township. [2]

And the defendant claims that the said county court, although such subscription may have been made to the said Lexington, Chillicothe and Gulf Railroad Company, as alleged by the plaintiffs, had no legal power or authority to transfer said subscription to the said Lexington, Lake and Gulf Railroad Company, and that the action of said court would have been null and void.

Defendant admits that the coupon sued on was attached to said bond as stated in the said petition.

But the defendant denies the plaintiffs are entitled to recover in this action, for the reasons and denials heretofore in this answer
69 suggested: Because the said bonds were by the inhabitants of Mount Pleasant Township voted to one company, and the said county board, without authority of law or any lawful power whatever, issued and delivered them to another, and because the alleged consolidation so made or set up in the said petition was irregularly and illegally made, and is void in law.

Defendant having fully answered, asks to be discharged with costs.

A. M. LAY &
C. C. BASSETT,
Att'ys for Def't.

And afterward, at the said April term of said circuit court, and on April the 20th, 1875, the following proceedings were had, to wit:

Motion filed to strike out parts of am'd answer.

VALENTINE WINTERS ET AL.
vs.
BATES COUNTY. } No. 112.

This day come the plaintiffs, by their attorney, and file a motion to strike out part of defendant's amended answer.

This motion is in words and figures following, to wit:

70 V. WINTERS ET AL.
vs.
BATES COUNTY.

Motion to strike out, &c.

Now come the plaintiffs & move the court to strike out the several parts of the amended answer hereinafter set forth, because they are irrelevant & immaterial, and do not constitute or tend to establish any defense to the plaintiff's action.

1st. Commencing at line 23, p. 3, (page 66.) & ending at line 15, p. 4, (page 67,) the words, "But states the fact to be that no meeting of the stockholders of the said Lexington, Chillicothe & Gulf Railroad Company was ever regularly called for the purpose of making such consolidation as required by law, nor was any notice whatever given to the stockholders of said company or the directors thereof residing in Bates County or Mount Pleasant Township of any such meeting, as required by law, nor did any of the said stockholders or directors appear or participate in any such meeting, nor was the stock so voted by the inhabitants of Mount Pleasant Township in any manner represented in any such meeting."

71 2d. Commencing at line 26, p. 4, (page 67,) & ending at line 6, p. 5, (page 67,) the words, "Defendant says that any such con-

solidation was illegal & void in law, because the result of the said consolidation would be to deprive the public of the benefit of competition between the said roads, contrary to the statute in such case made and provided."

3d. Commencing at line 26, p. 5, (page 68,) and ending at line 2, p. 6, (page 68,) the words, "Nor had any certificate of stock at any time previous thereto been issued, tendered, or delivered to the said court in behalf of said township."

T. K. SKINKER,
Att'y for Plaintiff.

And afterward, at the same April term of said circuit court, and on the 22d day of April, 1875, the following proceedings were had, to wit:

Motion to strike out, &c., submitted.

VALENTINE WINTERS ET AL.
vs.
BATES COUNTY. } 112.

This day come the parties by their respective attorneys, plaintiff by Thomas K. Skinker, esq., and defendant by C. C. Bassett, esq., and thereupon the motion to strike out part of defendant's amended answer was argued by counsel and submitted.

72

And afterward, at said April term of said circuit court, and on the 26th day of April, 1875, the following proceedings were had, to wit:

Motion to strike out parts of am'd answer overruled; case called for trial; jury waived; hearing, argued, & submitted.

VALENTINE WINTERS AND JONATHAN H. WINTERS
vs.
BATES COUNTY. } 112.

This day come the parties by their respective attorneys, the plaintiffs by Thomas K. Skinker, esq., and the defendant by Bassett and Lay & Belch, and the motion to strike out part of the answer herein having been heretofore argued and submitted, and by the court taken under advisement and having considered the same, and being fully advised in the premises, the court doth order that said motion be overruled; and this case being regularly called for trial, and an agreement of counsel having been this day filed waiving a jury, this case was thereupon tried before the court, sitting as a jury, and was argued by counsel and submitted upon the pleadings and proofs.

The waiver of jury filed as mentioned in the foregoing order is in words and figures following, to wit:

Jury waiver.

V. WINTERS ET AL.
vs.
73 BATES COUNTY.

A jury is hereby waived.

T. K. SKINKER,
Att'y for Plaintiffs.
C. C. BASSETT,
Att'y for Defendant.

APRIL 26th, 1875.

And afterward, at the same April term of said circuit court, and on the 28th day of April, 1875, the following proceedings were had, to wit:

Additional counts filed to petition; agreement as to amended pleadings; finding for pl'ff.

VALENTINE WINTERS AND JONATHAN H. WINTERS
vs.
BATES COUNTY. } 112.

This day come the parties by their respective attorneys, the plaintiffs by Thomas K. Skinker, esqr., and the defendant by Charles C. Bassett, esq., and thereupon, by consent, the plaintiff amends his petition by filing additional counts thereto, and the coupons referred to in said counts, and it is here by counsel agreed that the answer heretofore filed shall stand as the answer to said petition as amended.

And this cause having been heretofore submitted to the court upon the pleadings and proofs, and being now fully advised in the premises, the court finds for the plaintiff' on the issues joined herein, and that said
74 defendant is indebted to the plaintiff', by reason of the non-payment of the coupons or interest-warrants in the petition described, in the sum of six thousand two hundred and fifty-one dollars and fourteen cents, ($6,251.14.)

Special finding of facts returned.

And the court returns a special finding of the facts proven upon the trial of the cause, which is ordered to be filed and made part of the record herein.

Judgment.

It is therefore now considered by the court that the plaintiffs, Valentine Winters and Jonathan H. Winters, recover against the defendant, The County of Bates, in the State of Missouri, the said sum of six thousand two hundred and fifty-one dollars and fourteen cents, ($6,251.14,) the amount so found to be due by the court, and the costs herein expended, and that execution issue therefor.

Execution ordered; supersedeas bond waived.

Whereupon a stipulation, signed by plaintiffs' attorney, waiving a supersedeas bond, is filed herein.

The additional counts to petition, filed as stated in foregoing order, are in words and figures following, to wit:

Additional counts to petition

WINTERS
vs.
BATES CO. } 112.

Now come the plaintiffs, and by consent of defendant and by leave
75 of court, file this paper as for supplemental counts on coupons of interest attached to certain bonds mentioned in the petition, which coupons are herewith filed, bearing date Jan'y 18, 1871, whereby

solidation was illegal & void in law, because the result of the said consolidation would be to deprive the public of the benefit of competition between the said roads, contrary to the statute in such case made and provided."

3d. Commencing at line 26, p. 5, (page 68,) and ending at line 2, p. 6, (page 68,) the words, "Nor had any certificate of stock at any time previous thereto been issued, tendered, or delivered to the said court in behalf of said township."

T. K. SKINKER,
Att'y for Plaintiff.

And afterward, at the same April term of said circuit court, and on the 22d day of April, 1875, the following proceedings were had, to wit:

Motion to strike out, &c., submitted.

VALENTINE WINTERS ET AL.
vs. } 112.
BATES COUNTY.

This day come the parties by their respective attorneys, plaintiff by Thomas K. Skinker, esq., and defendant by C. C. Bassett, esq.,
72 and thereupon the motion to strike out part of defendant's amended answer was argued by counsel and submitted.

And afterward, at said April term of said circuit court, and on the 26th day of April, 1875, the following proceedings were had, to wit:

Motion to strike out parts of am'd answer overruled; case called for trial; jury waived; hearing, argued, & submitted.

VALENTINE WINTERS AND JONATHAN H. WINTERS
vs. } 112.
BATES COUNTY.

This day come the parties by their respective attorneys, the plaintiffs by Thomas K. Skinker, esq., and the defendant by Bassett and Lay & Belch, and the motion to strike out part of the answer herein having been heretofore argued and submitted, and by the court taken under advisement and having considered the same, and being fully advised in the premises, the court doth order that said motion be overruled; and this case being regularly called for trial, and an agreement of counsel having been this day filed waiving a jury, this case was thereupon tried before the court, sitting as a jury, and was argued by counsel and submitted upon the pleadings and proofs.

The waiver of jury filed as mentioned in the foregoing order is in words and figures following, to wit:

Jury waiver.

V. WINTERS ET AL.
vs. }
73 BATES COUNTY.

A jury is hereby waived.

T. K. SKINKER,
Att'y for Plaintiffs.
C. C. BASSETT,
Att'y for Defendant.

APRIL 26th, 1875.

And afterward, at the same April term of said circuit court, and on the 28th day of April, 1875, the following proceedings were had, to wit:

Additional counts filed to petition; agreement as to amended pleadings; finding for pl'ff.

VALENTINE WINTERS AND JONATHAN H. WINTERS
vs.
BATES COUNTY. } 112.

This day come the parties by their respective attorneys, the plaintiffs by Thomas K. Skinker, esqr., and the defendant by Charles C. Bassett, esq., and thereupon, by consent, the plaintiff amends his petition by filing additional counts thereto, and the coupons referred to in said counts, and it is here by counsel agreed that the answer heretofore filed shall stand as the answer to said petition as amended.

And this cause having been heretofore submitted to the court upon the pleadings and proofs, and being now fully advised in the premises, the court finds for the plaintiff' on the issues joined herein, and that said defendant is indebted to the plaintiff', by reason of the non-pay-
74 ment of the coupons or interest-warrants in the petition described, in the sum of six thousand two hundred and fifty-one dollars and fourteen cents, ($6,251.14.)

Special finding of facts returned.

And the court returns a special finding of the facts proven upon the trial of the cause, which is ordered to be filed and made part of the record herein.

Judgment.

It is therefore now considered by the court that the plaintiffs, Valentine Winters and Jonathan H. Winters, recover against the defendant, The County of Bates, in the State of Missouri, the said sum of six thousand two hundred and fifty-one dollars and fourteen cents, ($6,251.14,) the amount so found to be due by the court, and the costs herein expended, and that execution issue therefor.

Execution ordered; supersedeas bond waived.

Whereupon a stipulation, signed by plaintiffs' attorney, waiving a supersedeas bond, is filed herein.

The additional counts to petition, filed as stated in foregoing order, are in words and figures following, to wit:

Additional counts to petition

WINTERS
vs. } 112.
BATES CO.

Now come the plaintiffs, and by consent of defendant and by leave
75 of court, file this paper as for supplemental counts on coupons of interest attached to certain bonds mentioned in the petition, which coupons are herewith filed, bearing date Jan'y 18, 1871, whereby

defendant promised to pay to the bearer thereof 100 dollars for each coupon at the Bank of America, in the city and State of New York, on the several days hereinafter named for semi annual interest to said dates on said bonds.

That before the maturity of said coupons they became & now are the holders for value of said coupons, which are as follows, viz: Coupons due on the 18th day of January, 1874, which express to be for interest then due on bonds Nos. 60, 59, 58, 57, 56, 61, 64, 65, 66, 67, 69, 70, 75, 76, 77, 79, 80, 68, 78. Also, coupons due on the 18th day of January, 1875, which express to be for interest then due on bonds Nos. 60, 59, 58, 57, 56, 61, 64, 65, 66, 67, 69. 70, 75, 76, 77, 79, 80, 68, 78. That all said several coupons are due and unpaid, and bear interest from maturity at the rate of 7 % per annum.

Plaintiffs pray judgment on all said several coupons, with interest on each from its maturity at the rate of seven per cent., & for costs.

T. K. SKINKER,
Att'y for Plaintiffs.

76 The waiver of supersedeas bond filed by plaintiffs' attorney April 28th, 1875, and mentioned in order of court of same date, is in words and figures following, to wit:

Waiver of supersedeas bond.

WINTERS *vs.* BATES CO. } 112.

I waive a supersedeas bond in this case.

T. K. SKINKER,
Att'y for Plaintiffs.

The special finding of the court is in words and figures following, to wit:

Special finding of facts.

In the circuit court of the United States for the western district of Missouri.

VALENTINE WINTERS AND JONATHAN WINTERS, plaintiffs, *against* BATES COUNTY, DEFENDANT.

Now at this day come the parties, by their attorneys, and by written stipulation filed herein submit this cause for trial to the court.

And thereupon the court proceeds to hear the evidence, and doth find therefrom the following special facts and verdict, to wit:

77 1. That on the 5th day of April, 1870, the county court of Bates County, Missouri, made an order for an election to take the sense of the qualified voters of Mount Pleasant Township, in said county, as to whether said township should subscribe ninety thousand dollars to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company, which order was as follows, to wit:

Order for election.

Ordered by the court, that a special election be held in Mount Pleasant Township, in the county of Bates and State of Missouri, on the 3d

day of May, 1870, for the purpose of ascertaining the sense of the people of said township as to whether they will or will not subscribe ninety thousand dollars to the Lexington, Chillicothe and Gulf Railroad Company in accordance with the petition of 111 citizens of said township, filed herein, and on the terms as therein specified, which are as follows, to wit:

In case such bonds or subscription is voted as herein comtemplated, the said bonds to be made payable at the Bank of America, in the city and State of New York, one-third of said bonds to be made payable ten years after date thereof, one-third fifteen years, and the remaining one-third twenty years after the date thereof. Said bonds shall bear interest at the rate of ten per cent. per annum, and payable annually, and to date from the day of delivery.

78 The county court shall appoint a suitable and competent person as commissioner, who shall be a citizen of Bates County, and shall require said commissioner to enter into a good and sufficient bond to the county of Bates, to be approved by the county court, for the faithful performance of his duty, as hereinafter provided.

The commissioner provided for in the preceding section shall receive said bonds into his custody and dispose of the same as hereinafter provided; said commissioner shall be authorized and duly empowered to sell and dispose of said bonds to the best of his ability, provided, however, that he shall be held to receive and account for said bonds, and shall receive a reasonable compensation therefor out of the same, to be determined by the court.

Said commissioner shall deliver and pay to the Lexington, Chillicothe and Gulf Railroad Company, or their agent, ninety per cent. of the total amount of each monthly estimate of work done in Mount Pleasant Township, made by the engineer of said company, as hereinafter provided, for work done on said road-bed, and take a receipt from said company or their agent for the same, which said receipt shall be a voucher to the county court, and upon the presentation of said receipt to the county court, the said court shall take up said receipt and give said commissioner a credit for the amount so receipted for, and the

79 acknowledgment of said receipt by said court shall thenceforward discharge said commissioner from further liability on his bond for the amount so receipted, and in like manner to pay and receipt until the whole amount of bonds or money which said commissioner shall be charged with shall have been thus expended, except the remaining ten per cent., which has been withheld on each monthly estimate or payment as a fiduciary fund, which ten per cent. of the whole amount thus receipted for from time to time, as hereinbefore directed, shall at the time and with the last payment be paid to said company or their agent.

In case said bonds are elected by said township, as provided for by law, and when the Lexington, Chillicothe and Gulf Railroad Company shall have fully located, and put all their road under contract south of the city of Lexington to the north line of Mount Pleasant Township, as it now exists in Bates County, then the county court of Bates County shall make, or cause to be made, her bonds for the amount herein provided, and deliver the same into the hands of said commissioner.

The engineer of said company shall, six days previous to the end of each month, make out an itemized estimate of the amount of work done in Mount Pleasant Township, on which the company expect to make their next demand for money, in which estimate he shall set out

80 the amount and kind and class of work, whether it be of earth or masonry, and the price thereof, under his oath and official signature.

The conditions made on the part of the Lexington, Chillicothe and Gulf Railroad Company are such that if the said railroad company shall locate said railroad into and through Mount Pleasant Township to the town of Butler in Bates County, and commence and complete a road on the line of said location to the town of Butler as aforesaid, within two years after the delivery of said bonds, and locate and continue a depot within one-third of a mile of the court-house in Butler, and commence the building of that portion of the road lying within Mount Pleasant Township, at the point where the depot is to be located, and build and complete said road-bed from that point to the north line of said township, then and as said work is in state of progression said bonds or their equivalent shall be delivered to said company, as herein provided.

It is further ordered by the court that a special election be held in Grand River Township, in the county of Bates and State of Missouri, on the 4th day of May, 1870, for the purpose of ascertaining the sense of the people of said township as to whether the' will or will not
81 subscribe forty thousand dollars to the Lexington, Chillicothe and Gulf Railroad Company, in accordance with petition of citizens filed here in court, and on the same conditions set forth in the above and foregoing order and petition.

2. That on the 4th day of May, 1870, such election was held pursuant to such order, and resulted in favor of the subscription; and thereupon, on the 14th day of June, 1870, the said county court made the following order, to wit:

Order subscribing stock to R. R. co.

Now, at this day, is filed in open court the certificate of the clerk of this court showing that on the 3d day of May, 1870, an election of the qualified voters of Bates County, State of Missouri, was held to obtain the assent of said voters to subscribe the sum of ninety thousand ($90,000) dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company in pursuance of an order of this court submitting a proposition to subscribe said sum, which order was made on the 5th day of April, 1870, and the court being satisfied that two-thirds of the qualified voters of said township who voted at said election did vote in favor of said subscription and have given their assent thereto:

It is therefore ordered by the court that the sum of ninety thousand ($90,000) dollars be, and the same is hereby, subscribed as stock
82 to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company in the name and behalf of Mount Pleasant Township in said county, subject to and in pursuance of all the terms, restrictions, and limitations of the petition of tax-payers and residents of said township heretofore filed and the order of this court thereunder so made as aforesaid on said 5th day of April, 1870, and that the agent of this court to represent the interest of this county in said railroad company be and he is hereby, authorized and directed to make said subscription on the stock-books of said company, and in making said subscription he is ordered to have copied in full the orders made by this court on said 5th day of April, 1870, as the conditions on which the same is made, and that he report to this court his acts in the premises aforesaid.

3. That under said order A. L. Betts, the commissioner therein appointed to subscribe to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company, went to Lexington, Missouri, for that pur-

pose; that he carried with him a copy of the records of said county court for the purpose of showing his authority to act in the premises; that the company then had no books on which the subscription could be made, by reason whereof the said Betts did not make the subscription.

83 That thereupon the said Betts sought to withdraw or reclaim the papers he had taken with him, but said company refused to allow him to do so. That said Betts again went to Lexington to make such subscription, but after he got there and saw the condition of the board he did not make the subscription, and made report to the said county court of his acts and doings on the 19th day of December, 1870, as follows, to wit:

Report of A. L. Betz, com'r, &c.

In the county court of Bates, October 2d. Adjourned term.

Now, at this day comes A. L. Betz, as commissioner of said court to subscribe bonds to the capital stock of Lexington, Chillicothe and Gulf Railroad Company, and, reporting, say':

That, three days after his appointment as such commissioner, he proceeded to the city of Lexington, and there found the board of directors in open session, and fully identified himself as such commissioner by the presentation to said board of directors proper certificates, attested by your clerk under his official seal.

That your said commissioner advised said board of his intention to subscribe bonds to the amount of one hundred and thirty thousand dollars for Bates County, in behalf of Mount Pleasant and Grand River Town-

84 ships, and was informed by said board of directors that they did not then have a suitable (book) for that purpose. Whereupon your commissioner placed all the necessary papers in the hands of the secretary of said company, that he might spread them on the books, so that your commissioner might, on another occasion, more quickly do the matter.

On or about the first of August following, your commissioner again went to the city of Lexington for the purpose of subscribing said bonds.

But, on coming before the said board, he found them quarreling among themselves and in a bad condition generally, and further that they had so shaped the said board, and as your commissioner believed unlawfully, that Bates County was left without a guarding element the said board of directors; and your commissioner was of opinion that, in justice to the citizens of said township and to your honorable body, he should not make such subscription then, and he did not.

Soon after this your commissioner was informed that the said company had, as they claimed, merged themselves into another company, and your commissioner could not therefore make such subscription without further instruction from your honorable body.

85 The bonds of said township are therefore not subscribed..

All of which is most respectfully submitted, this 19th day of December, 1870.

A. L. BETZ, *Com'r.*

4. That no subscription of stock on the books of the company was in fact made, and that no certificate of stock was in fact issued to said township, prior to the consolidation hereinafter mentioned, to wit, the 4th day of October, 1870.

5. That on the 19th day of December, 1870, said county court made the following order, to wit:

Order appointing J. M. Borenig com'r, &c.

Now, at this day comes A. L. Betz, commissioner heretofore appointed by this court to subscribe stock to the Lexington, Chillicothe and Gulf Railroad Company, and as such presents his report; which is approved.

And said court having adjourned from day to day until the 22d day of December, 1870, the following other and further proceedings were had, to wit:

Ordered, that James M. Borenig be, and he is hereby, appointed as commissioner for the sale of the bonds subscribed by Bates County to the Lexington, Chillicothe and Gulf Railroad Company, on his entering into bond for $180,000.

86 6. That on the 18th day of January, 1871, the said county court made the following order, to wit:

Ordered by the court, that the bonds of Mount Pleasant Township, in the matter of issuing said bonds to the Lexington, Lake & Gulf R. R. Co.: Whereas heretofore, to wit, May 3d, 1870, a proposition was submitted to the qualified voters of Mount Pleasant Township, Bates County, in the State of Missouri, as required by law, to vote and subscribe the sum of ninety thousand dollars in bonds, in the name of said county, in behalf of said township, to the capital stock of the former Lexington, Chillicothe and Gulf Railroad Company, and which said amount of bonds was voted by the people and subscribed to the capital stock of said railroad company as required by law;

And whereas, on the 4th day of October, A. D. 1870, said Lexington, Chillicothe and Gulf Railroad Company, and the former Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, were consolidated and merged into one company, under the name and style of the Lexington, Lake and Gulf Railroad Company, as provided by law;

87 And whereas by authority of the provisions of law, and under & pursuant to the terms & conditions of said consolidation, said Lexington, Chillicothe and Gulf Railroad Company, and said Pleasant Hill Division of said company, have ceased to exist by name, and said Lexington, Lake and Gulf Railroad Company was formed by said consolidation, and possessing all the powers, rights, franchises, privileges, and immunities, and owning and control'ing all the assets, subscriptions, bonds, moneys, and properties whatever of the said two several railroad companies forming said consolidated company, or either one of them, together with the power, right, and authority in law & equity given said Lexington, Lake and Gulf Railroad Company to have, demand, and sue for and recover, receive and receipt for, all and every the assets, bonds, and subscriptions made to the capital stock of said two companies making said consolidation, and especially said bonds of said Mount Pleasant Township, and as fully and to all intents and purposes as said Lexington, Chillicothe and Gulf Railroad Company might or could have done had said consolidation never have been formed and entered into as aforesaid:

88 Now, therefore, be it hereby ordered by the county court of Bates County, that said sum of ninety thousand dollars in bonds, being ninety bonds of one thousand dollars each, be issued in the name of said Bates County, for and in behalf of said township of Mount Pleasant, payable to said Lexington, Lake and Gulf Railroad Company or bearer, in payment and satisfaction of said original subscription as aforesaid.

And be it further ordered, that said bonds be issued as aforesaid, and signed by the presiding justice of this court and attested by the clerk

thereof, and that the seal of this court be affixed to said bonds; and also that the coupons attached to said bonds be signed by said clerk of this county, all of said bonds to be dated as of this day, and of which said bonds thirty shall be due in ten years from date, thirty in fifteen years from date, and the remaining thirty in twenty years from date, each for one thousand dollars, payable at the Bank of America, in the city and State of New York, with coupons for interest attached at the rate of ten per cent. per annum.

And further ordered, that said bonds be delivered to James M.
89 Borenig, commissioner, and the proceeds thereof by him paid over to said Lexington, Lake and Gulf Railroad Company, or their agents, according to the terms and conditions of said subscription herein referred to, and said bonds, numbering from one to ninety, inclusive. Said James M. Borenig is hereby authorized to subscribe said stock to said railroad company.

7. That James M. Borenig, the commissioner appointed by the order of said county court on the 18th day of January, 1871, made said subscription on the books of the Lexington, Lake & Gulf Railroad Company on or about the 18th day of January, 1871, which was then accepted by the said Lexington, Lake & Gulf Railroad Company, and a certificate of stock then for the first time issued.

8. That the said Lexington, Chillicothe and Gulf Railroad Company was incorporated under the general laws of Missouri on the 25th day of August, 1869, and its articles of association are as follows, to wit:

OFFICE OF SECRETARY OF STATE,
City of Jefferson, Missouri:

I, Eugene F. Weigel, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete,
90 and full copy of the articles of association of the Lexington, Chillicothe and Gulf Railroad Company, filed August 25th, 1869, as appears by comparing the same with the original roll of said articles now on file as the law directs in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal.

Done at office this 18th day of March, A. D. eighteen hundred and seventy-three.

[SEAL.] EUGENE F. WEIGEL,
Secretary of State.

Articles of association of L., C. & G. R. R. Co.

Articles of association of the Lexington, Chillicothe & Gulf Railroad Company, made and entered into this 13th day of August, one thousand eight hundred & sixty-nine.

SECTION 1. The name of this association shall be the Lexington, Chillicothe & Gulf Railroad, and shall continue for the term of one hundred years.

SEC. 2. The object of this association is the constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property.

SEC. 3. The places from and to which said railroad is to be constructed, maintained, or operated are as follows:

91 Commencing at the city of Lexington, in Lafayette County, Missouri, and thence running southwardly from said city of Lexington & east of the headwaters of the Little Sni Creek by the way of Mt Hope, in said county, to Holden, on the Pacific Railroad, in Johnson Coun-

ty, and thence through East Sugar Creek Township in Cass Co.; thence southwardly in the direction of Butler, in Bates County, and thence southwardly, to such point in said Bates County, as may be found most advantageous to connect said railroad with Fort Scott, Kansas.

SEC. 4. The length of said railroad shall be as near as may be about seventy-five miles, and shall be made into or through the counties of Lafayette, Johnson, Cass, and Bates.

SECT. 5. The amount of capital stock of said company shall be two millions of dollars, divided into twenty thousand shares of one hundred dollars each.

SEC. 6. The names and places of residence of directors who shall manage its affairs for the first year and until others are chosen and qualified in their places, as follows:

Isaiah Nichols, Holden, Johnson Co., Mo.
Barney A. Craine, do. do. do. do.
92 Hosea A. Moore, do. do. do. do.
Henry V. Stall, Cass County, Missouri.
John Atkinson, Bates County, Missouri.
Alex. K. Owen, " " "
Andrew Ritchey, Altoona, Bates " "
Mitchell Pickett, Butler, Bates Co. Mo.
John Reid, Lexington, Lafayette Co. Missouri.
J. F. Atkinson, do. do. do.
Tilton Davis, " " "
Green D. Sutterfield, M't Hope, " "
Chas. L. Ewing, " " "

SEC. 7. This association is organized under and subject to chapter sixty-two and sixty-three of the general statutes of the State of Missouri.

We whose names are hereto signed as subscribers to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company hereby promise to be governed by the foregoing articles of association, and to pay the sums set opposite our names to the directors or the authorized agent of the directors of said company, whenever and at such times and in such amounts as they may call on us to do.

Witness our signatures and the amounts thereto annexed, this the 13th day of August, one thousand eight hundred and sixty-nine.

93 Names of subscribers.	Residence.	No. of shares of $100.	Dollars.
F. J. Tygard	Holden	47	4,700
J. Nichols	"	47	4,700
R. A. Craine	"	47	4,700
M. W. Mine	"	47	4,700
H. H. Moore	"	47	4,700
H. V. Stall	Cass Co., Mo	47	4,700
John Atkins	Bates Co., Mo	47	4,700
Alex. K. Owen	Butler	47	4,700
Mitchael Pickett	Butler	47	4,700
Andrew Ritchey	Bates Co., Mo	47	4,700
Richard J. Leejamutt	Bates Co., Mo	47	4,700
Jno. Reid	Lexington, Mo	47	4,700
Tilton Davis	do. do.	47	4,700
G. D. Sutterfield	Lafayette Co., Mo	47	4,700
J. F. Atkinson	" " "	47	4,700
Charles L. Ewing	" " "	47	4,700
Mark L. D. Motte	" " "	1	100

Signed by the p

STATE OF MISSOURI,
County of Johnson, ss:

Be it remembered that on this day came B. A. Craine, H. H. Moore, and H. V. Stall, three of the directors named in the articles of association hereto attached, and upon their oath state that there has been at least one thousand dollars of stock for every mile of railroad to be made, in good faith subscribed thereto, and that five per cent. in cash
94 has been paid thereon to the directors named in said articles of association, in good faith, and that it is intended in good faith to construct, maintain, and operate the road mentioned in said articles of association hereto attached.

B. A. CRAIG.
H. H. MOORE.
H. V. STALL.

Subscribed and sworn to before me this 20th day of August, 1869.
Witness my hand and seal notarial at my office in Holden.
[SEAL.] DAVID NATION,
Notary Public.

9. That the Pleasant Hill Division of the Lexington, Chillicothe, and Gulf Railroad Company was incorporated under the general laws of Missouri on the 18th day of July, 1870, and its articles of association are as follows, to wit:

OFFICE OF THE SECRETARY OF STATE,
City of Jefferson, Missouri.

I, Eugene F. Weigel, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of "Articles of association of the Pleasant Hill Division
95 of the Lexington, Chillicothe, and Gulf Railroad Company," filed July 18th, 1870, as appears by comparing the same with the original of said articles now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal.

Done at office, this 29th day of April, A. D. eighteen hundred and seventy-two.

[SEAL.] EUGENE F. WEIGEL,
Secretary of State.
By CHAS. SCHAEKEL,
Chief Clerk.

Articles of association of P. H. Div. of L. C. & G. R. R. Co.

Articles of association of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, made and entered into this the 14th day of July, one thousand eight hundred and seventy.

SECT. 1. The name of this association shall be the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and shall continue for the term of one hundred years.

SECT. 2. The objects of this association shall be the construction, maintaining, and operating a railroad for public use in the conveyance of persons and property, and eventually to consolidate with and
96 form a link in and be a part of the main line of the said Lexington, Chillicothe and Gulf Railroad Company.

SECT. 3. The places from and to which said railroad is to be constructed, maintained, and operated are as follows: Commencing on the south boundary line of Lafayette County, in the State of Missouri, in the vicinity of the town of Chapel Hill in said Lafayette County, and thence

running southwestwardly from said commencing point, along the most advantageous routes within one-quarter of a mile of the Lone Jack tree, in the vicinity of the town of Lone Jack, in Jackson County, in said State of Missouri, to the city of Pleasant Hill, in the county of Cass, in said State, and thence southwardly along the best and most advantageous route, by the way of the town of Austin in said Cass County, to such point at or near the south boundary line of said Cass County as may be found most advantageous, to intersect and consolidate with said Lexington, Chillicothe and Gulf Railroad Company.

SECT. 4. The length of said railroad shall be, as nearly as pos-
97 sible, about thirty-six (36) miles, and shall be made into or through the counties of Johnson, Jackson, and Cass, in said State of Missouri.

SECT. 5. The amount of capital stock of said company shall be one million of dollars, divided into ten thousand shares of one hundred dollars each.

SECT. 6. The names and places of residence of the directors who shall manage the affairs of the company for the first year and until others are chosen and qualified in their places are as follows:

Names.	Residence.
John W. Ried	Lexington, Lafayette Co., Mo.
John T. Crisp	Independence, Jackson Co., Mo.
Joseph Ragsdale	Near Chapel Hill, in Johnson Co., Mo.
John W. Tate	Lone Jack, Jackson Co., Mo.
Daniel Rheem	Lone Jack, Jackson Co., Mo.
Theodore Stanley	Pleasant Hill, Cass Co., Mo.
Chas. B. Dunbaugh	" " " " "
Clayton VanHof	" " " " "
Andrew Allen	" " " " "
Andrew A. Zick	" " " " "
W. H. H. Cundiff	" " " " "
J. H. Nash	Austin, Cass Co., Mo.
John Crum	" " " "

SECT. 7. This association is organized under and subject to chapters sixty-two and sixty-three of the general statutes of the State of Mis-
souri, and the acts of the general assembly amendatory thereto.
98 Now know ye that we, whose names are hereto signed are subscribers to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, hereby agree and promise to be governed by the foregoing articles of association, and to pay the sums set opposite our respective names to the directors of said company whenever and at such times and in such amounts as they may call on us so to do.

Witness our signatures and the amounts thereto annexed this 14th day of July, A. D. 1870.

Names.	No. shares	Amounts.
James Allen	five	$500
Zick & Gosch	ten	1,000
John A. M. Rudd	two	200
J. F. Raebuck	one	100
Theodore Leland	five	500
Smith & McFarland	five	500
M. Steineger	five	500
Ferd. Openheimer	one	100

Names.	No. shares.	Amounts.
Henry Kuttner	two	200
W. D. F. Whitsitt	ten	1,000
Andrew Allen	five	500
W. H. H. Cundiff	five	500
Hull & Lear	ten	1,000
A. G. Blakey	five	500
C. B. Du bangh	ten	1,000
E. H. Cordell	five	500
99 W'm S. Smith	two	200
B. F. Preston	two	200
F. W. Little	one	100
J. A. Shuttleworth	one	100
W. DeWar & Co	ten	1,000
Rob't Adams, j'r	three	300
Duston Adams	two	200
W. S. Patrick	two	200
T. D. Herndon	two	200
David Humphrey	five	500
J. A. Woodmany	one	100
Clayton Van Hoy	five	500
Caleb Winfrey	ten (10)	1,000
A. H. Shirily	one	100
Rud & Wildebon	one	100
Theod. Stanley	ten	1,000
Sam. Yankee, sen	one	100
Henry Long, sen	two	200
Geo. Payne	three	300
J. T. Edmonson	one	100
Martin Rice	five	500
S. S. Dean	one	100
Jacob Yankee	two	200
E. Allen	one	100
John W. Tate	three	300
Cha. Shawhan	two	200
Henry Long, jr	two	200
Anderson Long	one	100
John Edwards	one	100
John Shawhan	two	200
John Daniel	three	300
J. R. Simms	five	500
Cha's Scott	three	300
100 H. H. Dixon	one	100
P. S. Alexander	five	500
Tho's Burns	one	100
Sam'l Yankee	one	100
A. M. Johnson	one	100
O. Brown	two	200
Tha. B. Benton	one	100
Alf. Simpson	one	100
Warham Early	one	100
H. Hicklin	one	100
N. A. J. T. Trunnle	two	200
Thomas Hair	one	100
Dan'l Rheem	ten	1,000
Green E. Story	five	500
E. D. Harper	five	500
J. S. Fulks	five	500
H. Becker	two	200
D. G. Lander	two	200
John L. Morrison	five	500
A. Hess	one	100
J. Beyer	two	200
D. F. Bugle	five	500
W. H. Myers	five	500
J. D. Baum	two	200
R. S. Lymington, per W. D. F. Whitsitt	five	500

Names.	No. shares.	Amounts.
Jackson M. Collins	one	100
his Timothy + O'Connell mark	five	500
Witness: W. H. H. Cundiff		
Jerry Burns	five	500
W'm Stephens	five	500
Jno. R. Clay	five	500
John P. Lawder	five	500
A. M. Stearns	one	100
101 John F. Cordell	five	500
James Dunn, j'r		500
Tilton Davis	five	500
John W. Reed, Lexington	ten	1,000
Royce & Schooley	six	600
J. H. Nash	two	200
Rob't O. Austin	two	200
J. P. Hackenberry	one	100
John T. Phillips	one	100
H. Quick	one	100
H. L. Hobart	one	100
A. W. Gere	one	100
John Crum	five	500
G. H. Wear	one	100
C. McCoy	one	100
James Patten	one	100
John B. Jolley	one	100
Ja's D. Van Vachtan	one	100
Geo. F. Whitman	one	100
H. R. Ritter	two	200
N. B. Royce	one	100
Barney Evans	one	100
Tho's J. Kirtly	one	100
James Smotherman	one	100
M. H. L. Schooly	one	100
Alex. Arnett	two	200
Geo. Ward	two	200
J. W. Morris	one	100
L. J. Brown	one	100
H. Kirkpatrick	two	200
Geo. Brown	one	100
L. D. Vansandt	two	200
John T. Mitchell	two	200
102 The heirs John T. Crisp for self and brothers & sisters	ten	1,000
Russel Hick	five	500
Joseph Ragdale	two	200
John Buckley	one	100

STATE OF MISSOURI, *County of Cass, ss:*

We, the undersigned affiants and directors named in the foregoing articles, respectively make oath and state that the amount of stock required by the third section of chapter sixty-three of the general statutes of Missouri has been in good faith subscribed, and five per cent. paid in cash thereon, as required in said section, and that it is intended in good faith to construct, maintain, and operate the said railroad as specified in the foregoing articles of association.

ANDREW ALLEN.
CHA'S B. DUNBAUGH.
W. H. H. CUNDIFF.

Subscribed and sworn to before me this 18th day of July, 1870.

[NOTARIAL SEAL.] RUSH G. LEAMING,
Notary Public.

103 10. That the said Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill Division thereof, on the 4th day of October, 1870, filed their several acceptances of the provisions of the act of the general assembly of the State of Missouri, approved March 24th, 1870, authorizing the consolidation of railroads, said acceptances being filed in the office of the secretary of the State of Missouri, as required by said act.

11. That on the 4th day of October, 1870, under the said act of the general assembly of the State of Missouri, approved March 24th, 1870, the said Lexington, Chillicothe & Gulf Railroad Company and the said Pleasant Hill Division thereof filed their articles of consolidation in the office of the secretary of state aforesaid, which said articles are as follows, to wit:

OFFICE OF SECRETARY OF STATE,
City of Jefferson, Missouri.

I, Eugene F. Weigel, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of consolidation of the Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill Division of the Lex-
104 ington, Chillicothe and Gulf Railroad Company, under the name and style of the Lexington, Lake and Gulf Railroad Company, filed October 4, 1870, as appears by comparing the same with the original of said articles now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal. Done at office this 30th day of April, A. D. eighteen hundred and seventy-two.

[SEAL.]

EUGENE F. WEIGEL,
Secretary of State,
By CHA'S SCHAEKEL,
Chief Clerk.

Articles of consolidation of L., C. & G. & P. H. Div. of L., C. & G. R. R. Comp'y.

Articles of consolidation of the Lexington, Chillicothe & Gulf Railroad Company and the Pleasant Hill Division of the Lexington, Chillicothe, & Gulf Railroad Company.

To all whom it may concern:

Whereas heretofore articles of association were signed and entered into, and the Lexington, Chillicothe & Gulf Railroad Company duly incorporated thereunder, according to the laws of the State of Missouri, on the 25th day of August, A. D. 1869, and which said articles of association and act of incorporation were and are in *records* and figures as follows, to wit:

105 Articles of association of the Lexington, Chillicothe & Gulf Railroad Company, made and entered into this 13th day of August, one thousand eight hundred and sixty-nine.

SECTION 1. The name of this association shall be the Lexington, Chillicothe & Gulf Railroad Company, and shall continue for the term of one hundred years.

SECTION 2. The object of this association is the constructing, maintaining, and operating a railroad for public use in the conveyance of persons & property.

SECTION 3. The places from and to which said railroad is to be constructed, maintained, or operated *is* as follows:

Commencing at the city of Lexington, in Lafayette County, Missouri,

and thence running southwardly from said city of Lexington and east of the headwaters of the Little Sni Creek, by the way of M't Hope, in said county, to Holden, on the Pacific Railroad, in Johnson County, and thence through East Sugar Creek Township, in Cass County; thence southwardly in the direction of Butler, in Bates County, and thence southwardly to such point in said Bates County as may be found most advantageous to connect said railroad with Fort Scott, Kansas.

SECTION 4. The length of said railroad shall be as near as may
106 be about seventy-five miles, and shall be made into or through the counties of Lafayette, Johnson, Cass, and Bates.

SECTION 5. The amount of capital stock of said company shall be two millions of dollars, divided into twenty thousand shares of one hundred dollars each.

SECTION 6. The names and places of residence of the directors who shall manage its affairs for the first year, and until others are chosen and qualified in their places, as follows:

Isai'h Nichols, Barney A. Crain, & Hosea H. Moore, Holden, Mo.
Henry V. Stall, Cass County, Missouri.
John A. Winson, Bates County, Missouri.
Alex. K. Owens, " "
Andrew Ritchey, Altoona, Bates County, Mo.
Mitchell Pickett, Butler, Bates County, Missouri.
John Reid, J. F. Atkinson, Tilton Davis, Green D. Saterfield, and Cha's L. Ewing, Lafayette County, Missouri.

SECTION 7. This association is organized under and subject to chapter' sixty-two and sixty-three of the general statutes of the State of Missouri.

We whose names are hereto signed as subscribers to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company hereby promise to be governed by the foregoing articles of association, and to
107 pay the sums set opposite our names to the directors or the authorized agent of the directors of said company whenever, and at such times and places, and in such amounts, as they may call on us so to do.

Witness our signatures and the amounts thereto annexed this the 13th day of August, one thousand eight hundred and sixty-nine.

Name of subscribers.	Residence.	No. shares.	Dollars.
F. J. Tygard	Holden	47	4,700
I. Nichols	"	47	4,700
B. A. Crain	"	47	4,700
M. W. Mize	"	47	4,700
H. H. Moore	"	47	4,700
H. V. Stall	Cass Co., Mo	47	4,700
John Atkinson	Bates Co., "	47	4,700
Alex. K. Owens	Butler, "	47	4,700
Mitchell Pickett	" "	47	4,700
Andrew Ritchey	Bates Co., "	47	4,700
Richard J. De Samet	" " "	47	4,700
John Reid	Lexington, "	47	4,700
Tilton Davis	" "	47	4,700
G. D. Saterfield	Lafayette, "	47	4,700
J. F. Atkinson	" "	47	4,700
Cha's L. Ewing	" "	47	4,700
Mark L. De Motte	" "	1	100

Be it remembered that on this day came B. A. Crain, H. H. Moore, & H. V. Stall, three of the directors named in the articles of
108 association hereto attached, and upon their oath state that there has been at least one thousand dollars of stock for every mile of railroad proposed to be made in good faith subscribed thereto, and that five per cent. in cash has been paid thereon to the directors named in said articles of association in good faith, and that it is intended in good faith to construct, maintain, and operate the road mentioned in said articles of association hereto attached.

B. A. CRAIN.
H. H. MOORE.
H. V. STALL.

Subscribed and sworn to before me this 20th day of August, 1869. Witness my hand and seal notarial at my office in Holden.

[SEAL.] DAVID NATION,
Notary Public.

OFFICE OF SECRETARY OF STATE,
City of Jefferson, Missouri.

I, Francis Rodman, secretary of state for the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of association of the Lexington, Chillicothe and Gulf Railroad Company, filed August 25th, 1869, as appears by comparing the same with the original articles now on file, as the law directs, in this office.

In testimony whereof I have hereto set my hand and affixed my official seal.

109 Done at office this 25th day of August, A. D. eighteen hundred & sixty-nine.

[SEAL.] FRANCIS RODMAN,
Secretary of State,
By EUGENE F. WEIGEL,
Chief Clerk.

And whereas, also, articles of association were signed and entered into, and the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company duly incorporated thereunder, according to the laws of the State of Missouri, on the 18th day of July, A. D. 1870; and which said articles of association and act of incorporation are substantially in words and figures as follows, to wit:

Articles of association of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, made and entered into this 14th day of July, 1870.

SEC. 1. The name of this association shall be the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and shall continue for the term of one hundred years.

SEC. 2. The objects of this association shall be the construction, maintaining, and operating a railroad for public use in the conveyance of persons and property, and eventually to consolidate with and
110 form a link in and be a part of the main line of the said Lexington, Chillicothe and Gulf Railroad Company.

SEC. 3. The places from and to which said railroad is to be constructed, maintained, and operated are as follows: Commencing on the south

boundary-line of Lafayette County, in the State of Missouri, in the vicinity of the town of Chapel Hill, in Lafayette County, and thence running southwestwardly from said commencing-point, along the most advantageous routes, within one-quarter of a mile of the Lone Jack tree, in the vicinity of Lone Jack, in Jackson County, in said State of Missouri, to the city of Pleasant Hill, in the county of Cass, in said State, and thence southwardly along the best and most advantageous route, by the way of the town of Austin, in said Cass County, to such point at or near the south boundary-line of said Cass County as may be found most advantageous to intersect and consolidate with said Lexington, Chillicothe and Gulf Railroad Company.

SEC. 4. The length of said road shall be, as nearly as possible, about thirty-six miles, and shall be made into or through the counties of Johnson, Jackson, and Cass, in said State of Missouri.

111 SEC. 5. The amount of capital stock of said company shall be one million dollars, divided into ten thousand shares of one hundred dollars each.

SEC. 6. The names and places of residence of the directors who shall manage the affairs of the company for the first year, and until others are chosen and qualified in their places, are as follows:

Names.	Residence.
John W. Reid	Lexington, Lafayette Co., Mo.
John T. Crisp	Independence, Jackson Co., "
Joseph Ragsdale	Near Chapel Hill, Johnson Co., Mo.
John W. Tate	Lone Jack, Jackson Co., Mo.
Daniel Rheem	" " " " "
Theodore Stanley	Pleasant Hill, Cass Co., Mo.
Cha's B. Dunbaugh	" " " "
Clayton Van Hay	" " " "
Andrew Allen	" " " "
Andrew A. Zick	" " " "
W. H. H. Cundiff	" " " "
J. H. Nash	Austin, " " "
John Crum	" " " "

SEC. 7. This association is organized under and subject to chapter 62 and 63 of the general statutes of the State of Missouri and the acts of the general assembly amendatory thereto:

Now, know ye, that we, whose names are hereunto signed as
112 subscribers to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, hereby agree and promise to be governed by the foregoing articles of association, and to pay the sums set opposite our respective names to the directors of said company whenever and at such times and in such amounts as they may call on us so to do.

Witness our signatures and the amounts thereto annexed this 16th day of July, A. D. 1870.

Names.	No. shares.	Amounts.
James Allen	5	500
Zick & Gosh	10	1,000

&c., &c., making in all the sum of money required by law to be subscribed; & which said articles of association were duly sworn to, and act of incorporation amend' thereto, and which are as follows:

STATE OF MISSOURI,
County of Cass, ss:

We, the undersigned, affiants and directors named in the foregoing articles, respectively make oath and state that the amount of stock required by the third section of chapter 63 of the general statutes of Missouri has been in good faith subscribed, and five per cent. paid
113 in cash thereon, as required in said section, and that it is intended in good faith to construct, maintain, and operate the said railroad, as specified in the foregoing articles of association.

ANDREW ALLEN.
CHA'S B. DUNBAUGH.
W. H. H. CUNDIFF.

Subscribed and sworn to before me this 18th day of July, A. D. 1870.

RUSH G. LEAMING,
Notary Public.

OFFICE OF THE SECRETARY OF STATE,
City of Jefferson, Missouri.

I, Francis Rodman, secretary of state for the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of association of the Pleasant Hill Division of the Lexington, Chillicothe, and Gulf Railroad Company, filed in this office on the 18th day of July, 1870, as appears by comparing the same with the original articles of association, now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal.

Done at office, this 18th day of July, 1870.

FRANCIS RODMAN,
Secretary of State.
By EUGENE F. WEIGEL,
Ch'f Clerk.

114 And whereas said Lexington, Chillicothe and Gulf Railroad Company have commenced and will soon complete the construction of that part of said last-named railroad being within Lafayette County, but find it impossible and impracticable to commence or complete that part of said railroad indicated in the charter of said company and lying and being in and through the limits of said Johnson County and East Sugar Creek Township, in Cass County;

And whereas said Pleasant Hill Division of said Lexington, Chillicothe & Gulf Railroad Company have commenced the construction of said last-named road;

And whereas both said railroad companies have constructed parts of each said respective railroad and desire the consolidation thereof;

And whereas the line or route of said railroad indicated in the charter of said Pleasant Hill Division of said Lexington, Chillicothe & Gulf Railroad Company obviates the obstacles aforementioned and connects the line of said Lexington, Chillicothe and Gulf Railroad Company in Bates County with that part of said last-mentioned road in La-
115 fayette County, and which said two lines of railroad, when com-

pleted and connected, will form in the main and whole one continuous line of railroad, and running in the whole as in the main, in the same general direction of the line or road indicated in the articles of association of said Lexington, Chillicothe & Gulf Railroad;

And whereas it is desired by, and advantageous to, all concerned in and about said two several railroad companies herein named to consolidate in the whole and in the main and form one company, owning and control'ing such continuous and connected line of railroad, having and possessing all the powers, rights, privileges, and immunities, and subject to all the obligations and liabilities to the State or otherwise, which belonged to, or vested in, or vested upon, either of said two several companies desiring to make & construct said continuous line of railroad:

Now, therefore, these articles of consolidation and agreements, made and entered into and approved and ratified by and between said Lexington, Chillicothe & Gulf Railroad Company, of the one part, and said Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, of the other part, witnesseth:

That said two several railroad companies are hereby consoli-
116 dated and formed into one company with all the powers, rights, privileges, and immunities which belonged to, or vested in, or vested upon either of said companies, upon the following terms and stipulations & conditions, viz:

First. The corporate name of this association or consolidated company shall be the Lexington, Lake & Gulf Railroad Company, and shall continue for the term mentioned in the original articles of association of said Lexington, Chillicothe & Gulf Railroad Company, and which said consolidated company shall have and continue its office and general place of business at the city of Lexington, La Fayette County, Missouri.

Second. The intention and objects of this said consolidated company shall be the construction, maintaining, and operating a railroad for public use in the conveyance of persons and property, and to form one company, owning and control'ing one continuous & connected line of railroad, commencing at the said city of Lexington, in La Fayette County, Missouri, and running thence southwardly along the line and route, as indicated in the articles of association of original Lexington, Chillicothe & Gulf Railroad Company, to the south boundary-line of said La Fayette County, in the vicinity of the town of Chapel Hill, in said La Fayette County, and
117 thence and therefrom running along the line and road as mentioned and indicated in the articles of association of said original Pleasant Hill division of said Lexington, Chillicothe & Gulf Railroad Company, to such point in Bates County, Missouri, as may be required and found most convenient for said consolidated company to demand, receive, and avail itself of the subscriptions heretofore voted to the capital stock of said original Lexington, Chillicothe and Gulf Railroad Company by the township of Grand River and M't Pleasant, or either one of them, in said Bates County; and thence to such point in or through said Bates County as may be found most advantageous & convenient to connect with railroads constructed or to be constructed in the State of Kansas, or to extend said consolidated road on southward through such counties in the State of Missouri as may be most advantageous to connect or consolidate same with railroads leading to the States of Arkansas, Texas, or the Gulf of Mexico.

Third. The length of said consolidated road shall be as indicated in the articles of association of said Lexington, Chillicothe and Gulf Rail-
road Company, or of such length as said consolidated company
118 may hereafter see proper to make and extend same according to

law; and for the present shall be constructed into and through the counties named in said two several companies, and the capital stock shall be two million of dollars, same as stipulated in the original charter of said Lexington, Chillicothe and Gulf Railroad Company.

Fourth. That all certificates of stock of the two several companies shall be called in, and new certificates of stock shall be issued to those owning & entitled to the same, in lieu of the original stock, in the name of the new consolidated company, and all persons who are or may be entitled to certificates of stock in said two several companies, and not having yet received the same, shall have such certificates of stock issued to them upon satisfactory proof and demand in the name of the new consolidated company.

Fifth. Immediately upon the consolidation of said two several companies, as provided by law, said new or consolidated company to have and shall be empowered and possessed of all and singular the powers, rights, privileges, & immunities, and subject to all the obligations and liabilities to the State with contractors, engineers, or otherwise, which belonged to or vested in or vested upon
119 either of the said two several companies hereto making this consolidation and signing this agreement and articles; and said new or consolidated company to become and constitute one company under the name of the Lexington, Lake & Gulf Rail Road Company; that all property and franchises of said two several companies are hereby merged in one company; that the corporate names of said two several companies shall from the date of the said consolidation cease, and said new or consolidated company to take & exercise all and singular the rights, powers, and privileges to solicit and receive subscriptions to the capital stock of said new or consolidated company as might or could have been done by said two several railroad companies or either one of them.

And further, said new or consolidated company to have and possess full and complete power, authority, and right in law or equity to demand, sue for, recover, receive, and receipt for all and every such sums as may have been, and are now or may be subscribed to, voted or pledged to the capital stock of said two several railroad companies, or either one of them, by individuals, counties, townships, towns, or otherwise, so
120 that said consolidated company shall have full power and authority to have, use, and to own all and every the assets of said two several companies, or subscriptions made or to be made, whether absolute or conditional, to the capital stock of said companies, or either one of them, as fully and to all intents or purposes as either of said railroad companies might or could have done and performed had these articles of consolidation never have been concluded and entered into.

Sixth. That said new or consolidated company shall have and be possessed of and with all the powers, rights, & privileges and immunities in the building, operating, construction, & maintaining said new line of railroad that belonged or appertained in law or otherwise to said two several railroad companies or either one of them.

Seventh. That the stock now subscribed by individuals residing in the counties of Johnson, Jackson, and Cass to said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as well as the subscriptions now voted by the townships of Pleasant Hill,
121 Polk, & Austin, in said county of Cass, and the township of Van Buren, in the county of Jackson, all in the State of Missouri, shall be expended by said new or consolidated company in the construction of the road-bed and other necessary expenses appertaining thereto, including engineering expenses, or any other proper expense, exclusively upon the line and road of said consolidated company through and in the

counties of Johnson, Jackson, and Cass, as hereinbefore designated, and then only upon the terms, conditions, and limitations upon which said subscriptions were voted to the capital stock of said Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, as set forth in the petitions of the tax-payers of said several townships last named to the county courts of said respective counties asking for said vote and subscriptions.

Eighth. The number of directors who shall manage the affairs of said new or consolidated company shall be thirteen in number, and of which said number, after the next election for directors for said consolidated company as required by law, seven members & directors thereof shall be residents of and annually elected from that portion of
122 country on the line of said railroad north of the south line of said LaFayette County, one from the county of Johnson or Jackson, three from the county of Cass, and two from the county of Bates, or some county south of said county of Bates.

Ninth. The members of the boards of directors of said two several companies who shall be directors in and manage the affairs of said new or consolidated company until such time as elections are required for directors for said consolidated company by law, shall be and are the seven members of the board of directors of said original Lexington, Chillicothe & Gulf Railroad Company, now resident of said LaFayette County, and constituting the board of directors for said last-named company for said LaFayette County, and six of such members of said board of directors now managing the affairs and acting in said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company as may be designated and elected by said directors for LaFayette County in said new or consolidated company, and the offices and functions now had
123 and discharged by said directors of LaFayette County to continue in said consolidated company until the expiration of the terms thereof, and the first meeting of said new board of directors to be had under call of the president thereof as aforesaid, or any three members thereof.

Tenth. This consolidation of said Lexington, Chillicothe & Gulf Railroad Company and said Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company is formed and entered into under and by virtue of an act of the general assembly of the State of Missouri entitled "An act to amend chapter sixty-three of the General Statutes, entitled of railroad companies, so as to authorize the consolidation, leasing, & extension of railroads," approved March 24th, A. D. 1870, and the provisions of which said act have, before the consolidation of said two several railroad companies, been ratified and accepted by each of the said two railroad companies, and also by the stockholders in each of said companies, & the provisions of which said act are hereby and herein accepted and made part of these articles of consolidation.

124 In witness whereof the said Lexington, Chillicothe and Gulf Railroad Company and said Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, by their respective presidents thereof, under and by virtue of the resolutions and orders of the respective boards of directors thereof, heretofore had and made, have hereto, respectively, on the days hereinafter named, signed and executed the foregoing articles of consolidation of said two several railroad companies, said articles of consolidation having been agreed upon and the terms and conditions thereof first having been ratified and approved by a majority in interest of all the stock held in each of said railroad companies, at a meeting of the stockholders of said two several companies regularly called for that purpose.

Signed this 26th day of Sept., A. D. 1870, by the said Lexington, Chillicothe & Gulf Railroad Company, by the president thereof, and attested by the seal of said company & signature of the secretary for the time being, and also signed this 27th day of September, A. D. 1870, on
125 part of said Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, by the president thereof, and attested by the seal of said company & signature of the secretary.

[SEAL.] LEXINGTON, CHILLICOTHE & GULF R. R. Co.,
By JNO. REID, *President.*

GREEN D. SATTERFIELD,
Secretary.

[SEAL.] PLEASANT HILL DIVISION OF THE LEXINGTON, CHILLICOTHE & GULF R. R. Co.,
By THEODORE STANLEY, *President.*

JOHN F. LAWDER,
Secretary P. H. Div. L., C. & G. R. R. Co.

[One dollar int. rev. stamp.]

OFFICE OF THE PLEASANT HILL DIVISION OF THE LEXINGTON, CHILLICOTHE & GULF R. R. Co.,
Pleasant Hill, Sept. 28th, 1870.

I, John F. Lawder, secretary of the Pleasant Hill Division of the Lexington, Chillicothe & Gulf R. R. Co., do hereby certify that the foregoing articles of consolidation are a true copy of the original, made and entered into on the day & dates therein set forth by the respective companies who are parties thereto, as the same appears on the records
126 of the proceedings of this company.

In witness whereof I hereunto set my hand this 28th day of September, A. D. 1870.

JOHN F. LAWDER,
Sec. P. H. Div. L., C. & G. R. R. Co.

12. That neither Mount Pleasant Township nor the individuals, stockholders, and directors living in said township, had any notice of the meeting of the stockholders which was held for the purpose of such consolidation, and at that time no stock had been issued to Mount Pleasant Township, and neither it nor such individual stockholders and directors were represented in the meeting held for such purpose of consolidation, nor did they in any manner participate therein.

13. That on the 18th day of January, 1871, the bond set out in plaintiff's petition, and on which this action is based, was issued to the Lexington, Lake & Gulf Railroad Company; and said bond is as follows, to wit, (for copy of which see page No. 55.)

14. That the plaintiffs became the holders of all the bonds and
127 coupons in suit before maturity and for value, without actual notice of the facts pleaded in defence to said bonds, or any notice of defects in the issue of said bonds, except such as they were bound in law to take notice of, and such as the face of the bonds imparted to them.

15. That said Lexington, Lake and Gulf Railroad has been graded in part, but never completed.

16. That the lines and routes of the Lexington, Chillicothe & Gulf Railroad, and the Pleasant Hill Division thereof, and of the Lexington, Lake & Gulf Railroad are as indicated on the following map hereto attached and marked "Exhibit A." (See page 128.)

CONCLUSION OF LAW.

The court finds as a conclusion of law that the foregoing facts consti-

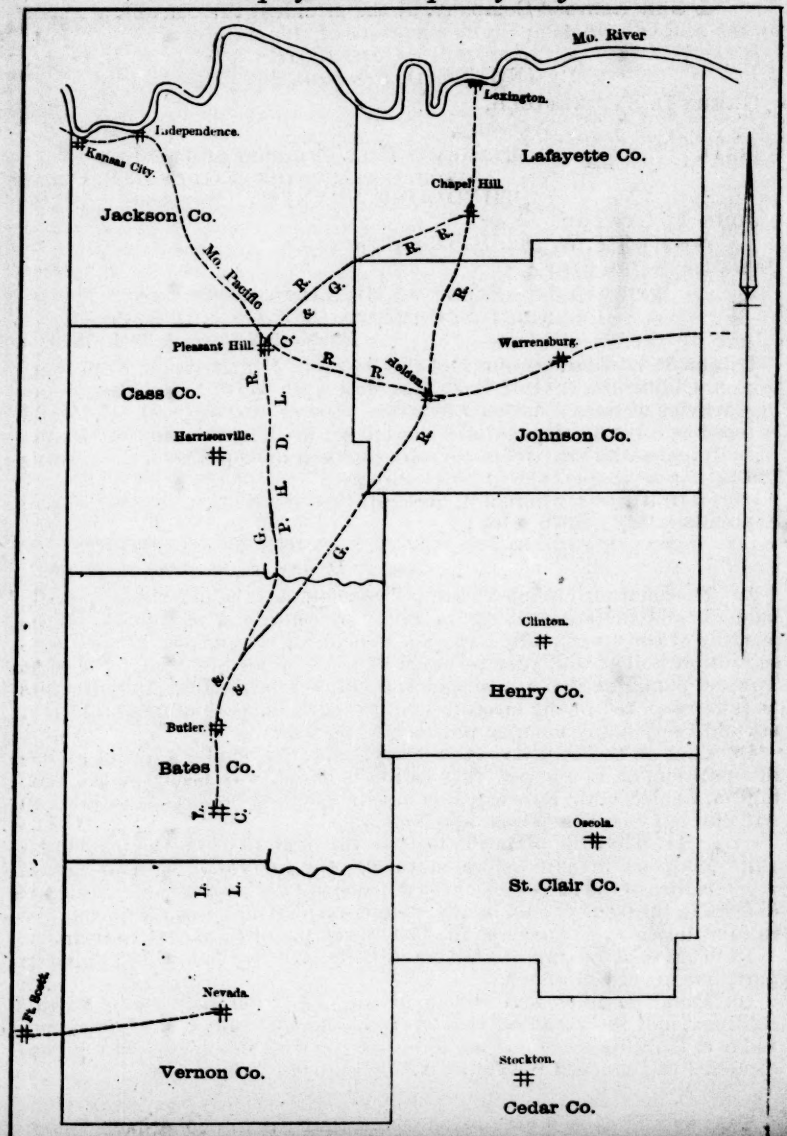
tled to final judgment for the amount of the coupons in suit, which is ordered accordingly.

128 To which finding and conclusion of law the defendant excepted.

JOHN F. DILLON, *Judge.*

EXHIBIT A.

Map referred to in special finding.



129 And afterward, at said April term of said circuit court, and on the 7th day of June, 1875, the following proceeding were had, to wit:

Writ of error allowed & citation signed.

VALENTINE WINTERS ET AL.
vs.
BATES COUNTY. } 112.

This day comes the defendant, by its attorney, and presents to the court a writ of error herein to reverse the judgment in favor of the plaintiffs rendered in this cause, and also a citation directed to said plaintiffs admonishing them to be and appear before the Supreme Court of the United States at the next term thereof, and thereupon said writ of error is allowed and citation signed by the court.

And afterward, in vacation of the said circuit court, and on the 23d day of June, 1875, the following proceedings were had, to wit:

Bond approved.

VALENTINE WINTERS ET AL.
vs.
BATES COUNTY. } 112.

130 This day comes the defendant, by its attorney, and presents to the court a bond for an appeal in this cause, which is approved and ordered to be filed.

The bond mentioned in the foregoing proceedings is in words and figures following, to wit:

Bond.

Know all men by these presents that we, C. C. Bassett, W'm Page, and W'm E. Walton are held and firmly bound unto Valentine Winters and Jonathan H. Winters in the full and just sum of five hundred dollars, to be paid to the said Valentine Winters and Jonathan H. Winters, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this eighth day of June, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately, at the April term, 1875, of the circuit court of the United States for the western district of Missouri, in a suit depending in said court between the said Valentine Winters and Jonathan H. Winters, plaintiffs, and Bates County, defendant, judgment was rendered
131 against the said Bates County, and the said Bates County having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Valentine Winters and Jonathan H. Winters citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of October next:

Now, the condition of the above obligation is such, that if the said Bates County shall prosecute said writ to effect and answer all costs if

it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

C. C. BASSETT. [SEAL.]
W'M PAGE. [SEAL.]
W'M E. WALTON. [SEAL.]

STATE OF MISSOURI,
County of Bates:

W'm Page, upon his oath, says that he owns property at the present time, over and above all incumbrances and indebtedness, of the value of ten thousand dollars.

W'M PAGE.

STATE OF MISSOURI,
County of Bates:

132 C. C. Bassett, upon his oath, says that he owns property at the present time, over and above all incumbrances and indebtedness, of the value of ten thousand dollars.

C. C. BASSETT.

STATE OF MISSOURI,
County of Bates, ss:

W'm E. Walton, upon his oath, says that he owns property at the present time, over and above all incumbrance and indebtedness, to the value of five thousand dollars.

W'M E. WALTON.

STATE OF MISSOURI,
County of Bates, ss:

Be it remembered that on this 22d day of June, A. D. 1875, personally appeared before me, a notary public in and for county and State aforesaid, W'm Page, C. C. Bassett, and W'm E. Walton, and subscribed and swore to the affidavits respectively signed by them above.

[SEAL.] S. B. LASHBROOKE,
Notary Public.

133 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I, Henry C. Geisberg, clerk of the circuit court of the United States for the western district of Missouri, do hereby certify that the writing hereto annexed is a true transcript of the records and proceedings in case No. 112, of Valentine Winters and Jonathan H. Winters against Bates County, State of Missouri, as fully as the same remains on file and of record in said case in this office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said district, this 3d day of December, A. D. 1875.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsement on cover:) No. 210. The County of Bates, plaintiff in error, vs. Jonathan Winters & Valentine Winters. W. Missouri, C. C. U. S. Filed 14th October, 1875.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

CASE No. 210.

THE COUNTY OF BATES,

Plaintiff in Error.

AGAINST

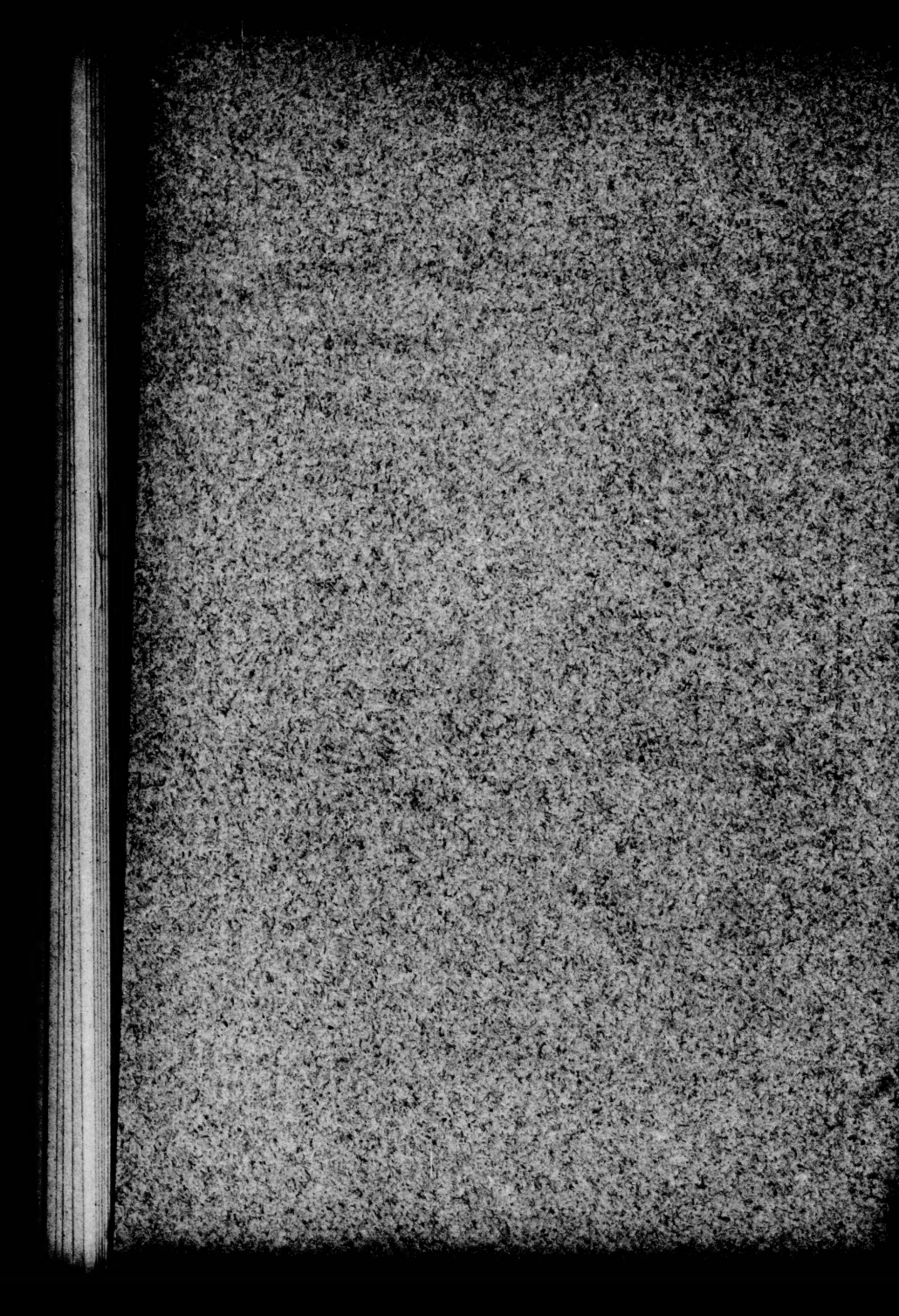
JONATHAN WINTERS and
VALENTINE WINTERS,

Defendants in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES,
FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR PLAINTIFF IN ERROR.

BRYAN, BRAND & CO., PRINTERS, ST. LOUIS.



Supreme Court of the U. S.

CASE NO. 210.

THE COUNTY OF BATES,

Plaintiff in Error,

AGAINST

JONATHAN WINTERS and
VALENTINE WINTERS,

Defendants in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR PLAINTIFF IN ERROR.

This action is based upon the same bonds that were in controversy in the case of Harshman *vs.* Bates County.

And the defense in this case is based upon the same leading facts and considerations that were involved in that case, that is to say,

I.

There was no vote in favor of the Company to which the bonds were issued, hence no power in the County Court of Bates County to issue them.

The law of Missouri, touching the authority of County Courts to subscribe for stock in railroad companies, and to issue bonds therefor, and upon which the bonds in suit are based, is as follows:

The Constitution of Missouri, Section 14, Article 11, prescribes—

"The General Assembly shall not authorize any county, city or town to become a stockholder in or to loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto."

Section LI, Article 2, Chapter 37, Wagner's Statutes of Missouri, is as follows:

"Whenever twenty-five persons, tax-payers and residents in any municipal township, for election purposes, in any county in this State, shall petition the county court of such county, setting forth their desire, as a township, to subscribe to the capital stock of any railroad company in this State, building or proposing to build a railroad into, through or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire such subscription shall be made, it shall be the duty of the county court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made; which election shall be conducted and returns made in accordance with the law controlling general and special elections, and if it shall appear, from the returns of such election, that not less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the county court to make such subscription

in behalf of such township, according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscription, the county court shall issue such bonds in the name of the county, with coupons for interest attached; but the rate of interest shall not exceed ten per cent. per annum; and the same shall be delivered to the railroad company."

Section LVI, same Article and Chapter, is as follows:

"Any two or more railroad companies in this State, existing under either general or special laws, and owning railroads, constructed wholly or in part, which when completed and connected will form in the whole or in the main, one continuous line of railroad, are hereby authorized to consolidate in the whole or in the main, and form one company, owning and controlling such continuous line of road with all the powers, rights, privileges, and immunities, and subject to all the obligations and liabilities to the State, or otherwise, which belonged to or rested upon either of the companies making such consolidation. In order to accomplish such consolidation, the companies interested may enter into contract fixing the terms and conditions thereof, which shall first be ratified and approved by a majority in interest of all the stock held in each company, or road proposing to consolidate, at a meeting of the stockholders, regularly called for the purpose, or by the approval in writing of the persons, or parties, holding and representing a majority of such stocks. A certified copy of such articles of agreement, with the corporate name to be assumed by the new company, shall be filed with the Secretary of State, when the consolidation shall be considered duly consummated, and a certified copy from the office of Secretary of State shall be deemed conclusive evidence thereof. The board of directors of the several companies, may then proceed to carry out such contract according to its provisions, calling in the certificates of stock then outstanding, in the several companies, or roads, and issuing certificates of stock, in the new consolidated company, under such corporate name as may have been adopted, provided, however, that the foregoing provisions of this section, shall not be construed to authorize the consolidation or any railroad companies or roads,

except when by such consolidation, a continuous line of road is secured, running, in the whole, or in the main, in the same general direction, and, provided, it shall not be lawful for said roads to consolidate in the whole or in part, when by so doing it will deprive the public of the benefit of competition between said roads, and in case any such railroad companies shall consolidate or attempt to consolidate their roads contrary to the provisions of this act, such consolidation shall be void, and any person or party aggrieved, whether stockholders or not, may bring action against them in the circuit court of any county through which said road may pass, which court shall have jurisdiction in the case, and power to restrain by injunction, or otherwise, and in case any railroad in this State shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight cars, without breaking bulk, upon said consolidated road, and such consolidated road shall transact the business of said intersecting or connecting road or roads, on fair and reasonable terms, and the same may be enforced by appropriate legislation. Before any railroad company shall consolidate their roads, under the provisions of this act, they shall each file with the Secretary of State a resolution accepting the provisions thereof, to be signed by their respective presidents, and attested by their respective secrataries, under the seal of their respective companies, which resolution shall have been passed by a majority vote of the stock of each, at a meeting of the stockholders thereof, to be called for the purpose of considering the same."

Before the 5th day of April, 1870, over twenty-five taxpayers and residents of Mount Pleasant Township petitioned the County Court of Bates County, setting forth their desire to subscribe $90,000 to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and thereupon the said Court ordered that an election should be held, in the said township, on the 3rd day of May, 1870, to determine if such subscription should be made.

The subscription was carried in compliance with the law.

After the vote was held, on the 18th day of July, 1870, the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was organized—it being a new, distinct and separate company from the one to which the voters of the Township had signified their desire to subscribe to, and on the 4th day of October, 1870, before the County Court had subscribed the $90,000 of stock to the road to which it was voted, the two companies were consolidated, in pursuance with the act of consolidation herein before cited, under the name of the Lexington, Lake and Gulf Railroad Company.

This consolidation was effected with $90,000 of the stock, which had been voted to one of the said Companies, not in any manner represented and with no voice as to the said consolidation, or the terms thereof.

The terms of the subscription suggested by the vote of the Township required that the road to which the stock was voted was to come by the way of Holden in Johnson County, whereas the road to which the County Court made the subscription, upon which these bands are based, as late as the 18th day of January, 1871, came by the way of Pleasant Hill, in Cass County, full fifteen miles west of the said city of Holden, or in fact adopted the *entire line* of the said *Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company*.

The enquiry is submitted in the light of the decision of this Court, in the case of Marsh vs. Fulton County, 10 Wallace 672, and in the later case of Harshman vs. Bates County, where did the County Court of Bates County derive their power and authority to subscribe stock for this Township to the capital stock of the Lexington, Lake and Gulf Railroad Company, a road which had not been organ-

ized and was not in existence when the vote was taken, to ascertain the purpose and desire of the tax payers and residents of said Township?

It may be answered to this, and it seems to be so asserted in the bonds, that the power and authority was by virtue of the action of the two companies, under the consolidation act.

Then why was not this $90,000 of stock permitted to speak with reference to this consolidation?

The result might have been far different, and every thing indicates that it would.

It is claimed by the defense that all efforts at consolidation by the companies, were entirely worthless, so far as to bind Mount Pleasant Township, as long as no subscription was made to the capital stock of the company, to which it had indicated a desire to subscribe, more especially as it had no voice in the effort made for consolidation.

See the Record in this case, page 57.

"That neither Mount Pleasant Township nor the individuals, stockholders and directors, living in said Township, had any notice of the meeting of the stockholders, which was held for the purpose of such consolidation, and at that time no stock had been issued to Mount Pleasant Township and neither it nor such individual stockholders and directors were represented in the meeting held for such purpose of consolidation, nor did they in any manner participate therein."

See also the report of the commissioner, A. L. Betz, as to said subscription, in said record, page 41, and the order of the County Court of Bates county, approving said report on the 19th day of December, 1870, six weeks or more after

said consolidation was effected, and also this finding on same page.

"That no subscription of stock on the books of the company was in fact made, and that no certificate of stock was in fact issued to said Township, prior to the consolidation hereinafter mentioned, to-wit: the 4th day of October, 1870."

And further at page 43,

"That James M. Boreing, the commissioner appointed by the order of said County Court, on the 18th day of January, 1871, made said subscription on the books of the *Lexington, Lake and Gulf Railroad Company*, on or about the 18th day of January, 1871, which was then accepted by the said Lexington, Lake and Gulf Railroad Company *and a certificate of stock then for the first time issued.*"

Justice Nelson, in Aspinwall et al vs. Commissioners of the County of Daviess, 22d Howard, 378, says:

"The election took place on the first Monday of March, 1849, when a majority of the votes was cast for the subscription.

"The Constitution of Indiana took effect 1st March, 1851.

"But the subscription was not made until the 10th of September, 1852, and the bonds were issued after that date.

"It is insisted that the contract of subscription became complete, when at the election, a majority of the votes was cast in its favor, and did not require the form of a subscription on the books of the stock of the railroad company to make it obligatory upon the parties.

"And which, if true, it is agreed the contract would be protected within the Constitution of the United States, as it would then have been complete, before the constitutional prohibition of Indiana.

"The Court is unable to concur in this view.

"It holds that *a subscription was necessary to create a contract binding on the County, on one side to take the stock and*

pay in the bonds and on the other to transfer the stock and receive the bonds for the same.

"Until the subscription is made, the contract is unexecuted and obligatory on neither party."

In this case, long before any subscription had been made to the road to which these bonds were voted, the Company had ceased to exist and was no longer authorized to receive the same, and then the County Court assumed for the said Township to make a subscription to an entirely different Company, and one that was not in existence when the election by the people of the Township was held.

And it is contended that the defense in this case is a better and stronger one than that presented to this Court in the case of Marsh vs. Fulton county.

Because we say that the road to which the County Court of Bates County assumed the power to subscribe, was more distinctly a different road from the one to which Mount Pleasant Township voted, than in the case cited, and these bonds are in no sense County Bonds.

Bates County, *for and in behalf of Mount Pleasant Township therein*, issues these bonds.

If the judgment should stand for the plaintiffs, the taxpayers of Mount Pleasant Township must pay it, and not Bates County.

The County Court of Bates County was merely selected by the Legislature as a medium through which the taxpayers and residents of the township could act, and the mere ministerial agent to carry out and perform the directions, desires and purposes of the township, as manifested and expressed in the petition which the law required them to file before a vote could be ordered.

The doctrine held in a number of cases when suit has

been brought on *county bonds* issued by county courts cannot apply here.

The proposition that the county is the principal, the court, the agent, does not apply here.

The County Court here had no general power whatever over this township. It could not act at all until the number of tax-payers and residents required by law had indicated by petition what they desired done, and if a two-thirds vote manifested that they desired a subscription made, then it became the duty of the County Court to make such subscription in behalf of such township, *according to the terms and conditions suggested by the voters of the township, and to the road named by them.* Thus far the County Court was authorized to go, and no further, and any other or further action by it was *ultra vires.* It had neither express nor implied authority to make subscriptions or issue bonds to any other road, or in any other manner than manifested, suggested and directed by vote of the township in accordance with the petition filed, as required by law. But here, in disregard of the direct suggestions of the tax-payers and residents of the township, without giving them an opportunity to express any opinion as to the consolidation effected, and long after this was done, the county court says that this township shall subscribe $90,000 to the capital stock of an entirely different road from the one they desired to take stock in. Certainly the law never intended or contemplated such an immense stretch of authority as this.

And this case clearly comes within the principles decided by this Court in the case of Clearwater vs. Meredith. 1 Wall., 26.

The Court there says: "The power of the Legislature,

to confer such authority, cannot be questioned, and without the authority railroad corporations, organized separately, could not merge and consolidate their interests. But in conferring the authority the Legislature never intended to compel a dissenting stockholder to transfer his interest because a majority of the stockholders consented to the consolidation.

"Even if the Legislature had manifested an obvious purpose to do so, the act would have been illegal, for it would have impaired the obligation of a contract."

II.

If the County Court did not possess power and authority derived from the vote of the township under the legislative enactment, hereinbefore quoted, to issue these bonds, then they are void—their collection cannot be enforced against the tax-payers of the township. Floyd Acceptances, 7 Wall., 666; Marsh vs. Fulton County, 10 Wall., 676.

The negotiability of these bonds can have no effect upon this question, as the enquiry turns upon their legal existence.

The act of March 24, 1870, authorizing the consolidation of railroad companies did not give the County Court the power, or authorize it to subscribe stock or issue bonds to the Lexington, Lake and Gulf Railroad Company.

It is claimed that the plaintiff purchased *bona fide*.

He does not stand in the position of an innocent holder for value. The bond, on its face, shows that it is worthless and invalid—that it was issued without authority—that the County Court had no power. Justice Field, in Marsh vs. Fulton County, says: "Purchasers of these bonds *are bound* to look to the action of the officers of the courts and ascertain whether the law has been so far followed as to justify

the issue of the bonds." If this doctrine be true, it applies, with peculiar force, to the bonds now under consideration.

And in Harshman vs. Bates County, Justice Bradley says: "Sufficient notice of these objections is contained in the recitals of the bonds themselves, to put the holder on enquiry."

III.

This Court will also perceive, from an examination of the record in this case, and the plat filed, that the consolidation, attempted to be effected, was void, as the act authorizing consolidation says: "Provided, however, that the foregoing provisions of this section shall not be construed to authorize the consolidation of any railroad companies or roads, except when by such consolidation, a continuous line of road is secured, running in the whole or in the main, in the same general direction, and provided, it shall not be lawful for said road to consolidate in the whole or part, when by so doing it will deprive the public of the benefit of competition between said roads; and in case any such railroad companies shall consolidate or attempt to consolidate their roads, contrary to the provisions of this act, such consolidation shall be void."

Now the result of this consolidation was to deprive the public of the benefit of competition, as can well be seen, and we suggest this to show how very great and gross were the irregularities committed for the purpose of securing by these two companies all the bonds that they might, whilst holding out the promise to the sections of the country, on each line, that the road would be built, on the route designated by them, when they cast their vote, under the order of the Court. The result was that no road was secured on either line, nor on the consolidated line.

The terms of the subscription, as indicated by their petition, proposed to be made by the tax-payers and residents of Mount Pleasant Township, were that the said Lexington, Chillicothe and Gulf Railroad should come from Lexington, by the way of the city of Holden, to the town of Butler, in said township, and that the road should be *completed* and the *cars running thereon* to the town of Butler, on or before the 4th day of July, 1871, or the said subscription and the bonds issued thereon were to be void.

And as a matter of fact, the said consolidated road is not, to this day, completed; not a rail of iron is laid thereon, nor are the cars running to the town of Butler, or on any part of the road south of Lexington, and it is also a fact that no work has been done on this road for over five years.

IV.

Again, it may be claimed, and we suppose is claimed, that the people have ratified the issue of these bonds, by their acquiescence and silence. The silence and assent of all the people in the township could not confer the power to issue these bonds. How could it ratify them after they were issued? The power to issue comes only from legislative enactments. The law must be complied with, and the bonds issued as directed by the vote of two-thirds of the voters of the township. If they were issued without authority, the acts of the court issuing them cannot be ratified by the implied assent of the people, nor expressly either. Marsh vs. Fulton County.

The case most strongly relied on by the defendant in error is that of Nugent vs. Putnam County. 19 Wall., 241. And the court below, at the time this case was decided by it, assumed then that its decision in the case of Harshman

vs. Bates County would be reversed by this Court, because of its decision in the case of Nugent vs. Putnam County, assuming that the cases were parallel, whereas this Court well conceived the distinctive differences between the two cases.

The bonds in that case were county bonds. In this case they are township bonds.

In that case the subscription was made to the road to which it was voted prior to the consolidation, and the bonds were issued to the road to which the subscription was made, and the county stock was represented in the meeting for consolidation.

In this case no subscription was made to the road to which it was voted. The subscription was made to the consolidated road, and the township stock was not represented in the meeting for consolidation. Subscription was made, after the consolidation, to another and different road, and the bonds were issued to said road.

And in the case of the County of Scotland vs. Thomas, 94 Supreme Ct. Rep., 691, which was decided since the Harshman case, Justice Bradley says:

"The decision of this court in the cause of Harshman vs. Bates County, is urged against this view of the case, but we do not think it is applicable. In that case the question was, whether authority given to the County Court, by the electors of a Township, to subscribe, in its behalf, for stock in a certain railroad company, continued to exist, after the company had ceased to exist, by being absorbed in another company by consolidation, we held that it did not. The County Court was regarded as being the mere agent of the township, having no discretion to act, beyond the precise terms of the power given. The powers of an agent or attorney, authorized to act for another, are very different from those possessed by a person acting in his own behalf, and the charter of the Alexandria and Bloomfield Railroad

Company, authorized foreign corporations to subscribe to its stock (supposing that by the General law of Missouri, they had no such power) they would undoubtedly have retained that power after the consolidation, it being in their discretion to exercise it or not. And if any such foreign corporation had, before the consolidation, sent an order to a firm in St. Louis, to subscribe stock for it in the original company, the firm could not have made the subscription, after the consolidation, without consulting their principal. Such a material change of circumstances would have rendered the subscription an excess of the power given to them.

"Authority given to be exercised, for his own benefit, and at his own discretion, may be exercised by him under changes of circumstances that would amount to a revocation of a power given to an Attorney, unless it expressly conferred discretion. A recurrence to the opinion in the Harshman case, will show that this distinction underlies the reasons given for the judgment in that case."

Now we say that these words strike the key-note to the defense against the bonds in this case, and we claim that the case at bar is a stronger case in favor of the defense, than that of Harshman vs. Bates County. Here the facts are found, showing that no subscription was made to the road to which it was voted, as required by law; no legal consolidation was ever effected and no road ever built.

And, in conclusion, we say, as has heretofore been said in the Harshman case, that if these bonds are legal, then the vote of the people, indicating to what road they desired to issue these bonds and the route designated by them, amounts to nothing—is a mere nullity, and the County Court can change and alter at their pleasure, the terms and conditions of the subscription voted.

No subscription was ever made to the company to which the bonds were voted. The people of Mount Pleasant Township had no voice in determining with reference to the

alleged consolidation of the two roads. The subscription must have been made by the County Court to the Lexington, Chillicothe and Gulf Railroad Company, and the voice of the Township to the amount of said subscription, must have been heard in the meeting or election, consolidating the two roads.

The defendant can, by no system of reasoning, be held liable for the payment of these bonds.

THOMAS C. REYNOLDS
and
C. C. BASSETT,
For Plaintiff in Error.

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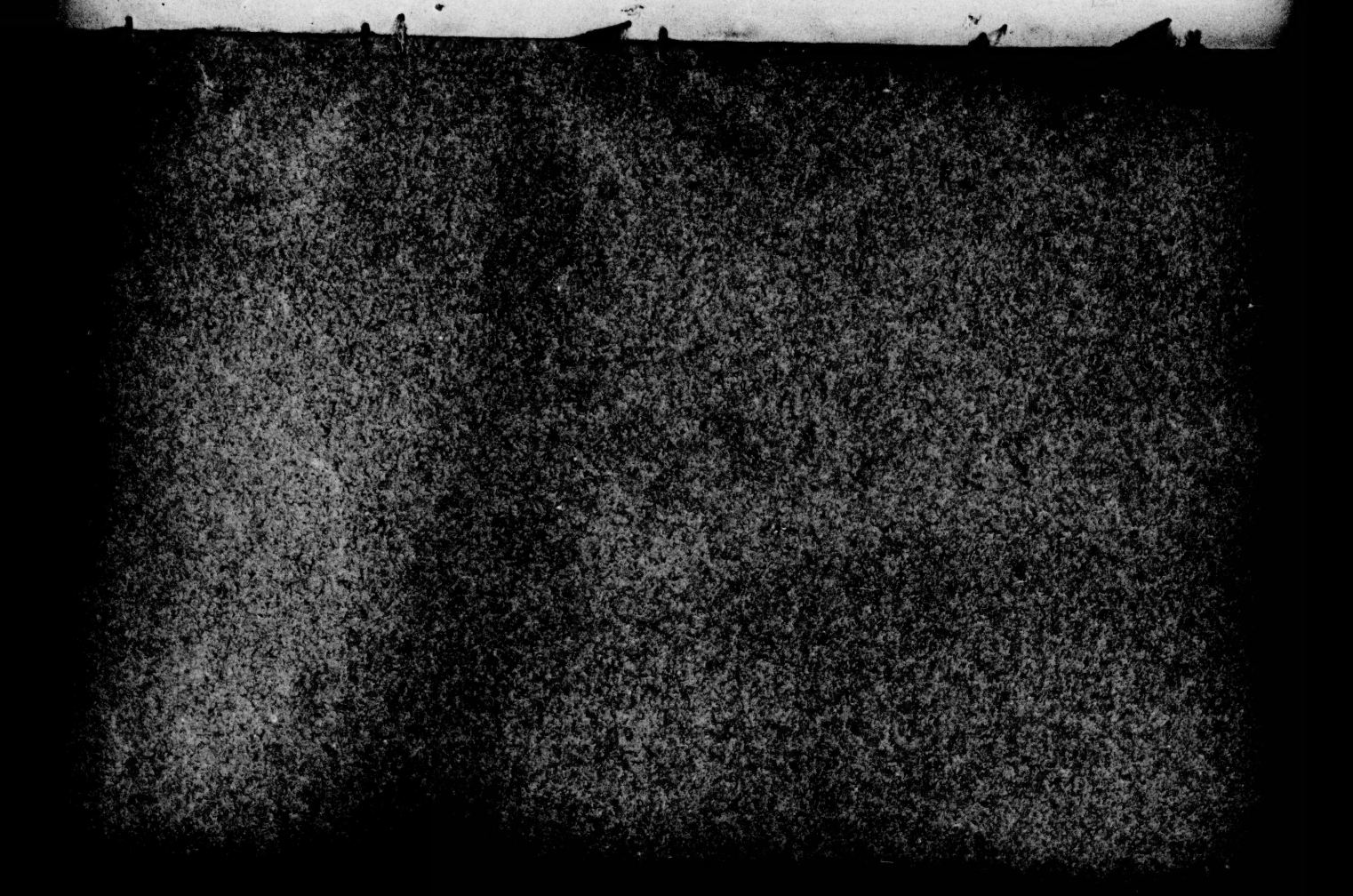


IN THE

SUPREME COURT OF UNITED STATES,

COUNTY OF BATES, PLAINTIFF IN ERROR, *vs.* JONATHAN WINTERS, ET. AL.	In Error to the Circuit Court of the Western District of Missouri.

Statement of the Case, Assignment of Errors, and Brief by Glover & Shepley for Plaintiff in Error.

STATEMENT OF THE CASE.

This was a suit by defendant in error, brought against the County of Bates, to recover a judgment upon certain coupons for interest upon similar bonds, to recover the interest upon which, suit was brought in case of Harshman *vs.* The County of Bates, decided by the Court and reported in 2 Otto, 269.

That case was an affirmance of a judgment rendered by the same Circuit Court which rendered the judgment in this case, after the sustaining of a demurrer to a petition, the plaintiff refusing to plead further. The petition, in that case, set forth substantially the same facts as appear in the special finding of facts in this case, but the Court, in the case now before the Court, considering that they were controlled by the case of Nugent *vs.* The Supervisors, which had been decided

by this Court after the judgment in the Circuit Court in the case of Harshman, rendered in this case a judgment for the plaintiff. An examination of the record in the two cases will show that there is no substantial difference in the facts as presented by the petition in the case of Harshman, from the facts as found by the Court in this case, the difference, if any, being in favor of the plaintiff in error, as will appear from the statement.

The amended petition, (page 29), in substance, stated:

1st. That, on the 5th of April, 1870, twenty-five persons, tax-payers of Mount Pleasant Township, in Bates County, did petition the County Court of said county, setting forth the desire of the township to subscribe to the capital stock of the Lexington, CHILLICOTHE & Gulf Railroad Company, and to issue bonds in payment thereof.

2d. That said Court ordered such election to be held on May 3, 1870, which was done, and that two-thirds of the qualified voters, who voted thereat, voted in favor of such subscription and of such issuing of bonds, and that the said company was, at the time mentioned, a corporation of Missouri.

3d. That the subscription was made by said Court to the capital stock of the said company, on the 14th day of June, 1870, and on the 17th day of June, 1870, said subscription was accepted by said company.

4th. That afterwards, on the 4th day of October, 1870, said company was consolidated with a certain other company, known as the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, which became incorporated under the laws of the State, *on the 18th day of October*, 1870, which consolidated company was called the Lexington, LAKE & Gulf Railroad Company.

5th. That the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of the stockholders of both companies, and avers a compliance with the provisions of the law of the State, approved March 24, 1870, authorizing consolidation of railroad companies.

6th. That the terms and conditions of such consolidation were such, the said Lexington, *Lake* & Gulf, (the consolidated company), became entitled to have, demand and sue for the subscriptions and bonds to be issued in payment thereof. That on the 18th day of January, 1871, the County Court did cause the bonds to be executed and delivered to said Lexington, *Lake* & Gulf Railroad Company.

7th. The petition then proceeds to set out the bond as *haec verba*, (being of the same issue bonds forming part of the petition in the Harshman case,) and a coupon becoming due on the 18th of January, 1872, which coupon it alleges belongs to plaintiff, is unpaid and upon which plaintiff asks judgment.

There was a stipulation filed that the amended petition was to be considered and taken to embrace eighteen similar counts, and the petition, answer and reply thereto should be considered as embracing and including all such counts.

The amended answer, (page 33), denies that any such petition was made to the County Court, or order for election made, or that any election was held at the time named, or that two-thirds of the qualified voters of said township, who voted thereon, voted in favor of the subscription; and denies that at the time named in the petition, any subscription was made by said county to the Lexington, Chillicothe & Gulf Railroad Company, or that it was accepted by the company at the time named, or at any time, and states the facts to be that long after the pretended consolidation of said Lexington, Chillicothe & Gulf Railroad Company with the Pleasant Hill Division of the Lexington, Chillicothe & Gulf, and on the 18th January, 1871, the County Court made said subscription to the consolidated company and issued the bonds to said consolidated company; that the County Court had no power to make the subscription or issue the bonds, and the same are void.

The answer further denies that there ever was any legal consolidation of said two companies; avers that no meeting of the stockholders of the Lexington, Chillicothe & Gulf Railroad Company was ever called for the purpose of making such consolidation as

required by law, nor was any notice given to the stock-holders of the company, nor did any stock-holders or directors of said road, ever appear at or participate in such meeting; and denies that said Lexington, *Lake* & Gulf Railroad Company, (the consolidated company), were entitled to take and receive such subscription and bonds. The answer avers that such consolidation was illegal and void.

The answer admits that on the 18th January, 1871, the County Court, of Bates County, did cause a subscription to be made to the Lexington, *Lake* & Gulf, and bonds to be executed, and among them the bond described in plaintiff's amended petition; but denies that any transfer of subscription had been made for the reason that no subscription had ever benn made prior to the 18th January, 1871, nor had any certificate of stock, at any time prior to that date, been issued, tendered or delivered to said Court, in behalf of said township, and avers that said County Court had no authority to subscribe to the consolidated company, or transfer the subscription even if made to the Lexington, Chillicothe & Gulf Railroad Company, to the consolidated company, and denies all liability.

The parties waiving a jury, the cause was submitted to the Court, who made a special finding of the facts in the cause, which appears on pages 38 to 59 of the record, and may be summarized as follows:

1st. That on the 5th of April, 1870, the County of Bates made an order for an election in Mount Pleasant Township, to be held on the 3d May, 1870, to ascertain whether they would subscribe $90,000 to Lexington, Chillicothe & Gulf Railroad Company, on the terms therein specified, which are set out in the order, one of which was, that the County of Bates was only to issue and place in the hands of a commissioner, the bonds (if authorized) when the Lexington, Chillicothe & Gulf Railroad Company should have fully located and put all their road under contract from Lexington to the north line of Mount Pleasant Township—and if the bonds should be delivered into the hands of the commissioner they were

not to be delivered to the company unless said Lexington, Chillicothe & Gulf Railroad Company should locate said road through Mount Pleasant Township, to the town of Butler, within two years after the delivery of the bonds to the commissioner, and locate a depot within a third of a mile of the court house, and commence the building of that portion of the road within Mount Pleasant Township, where the depot is to be located, and build and complete the road to the north line of said township, when, as such work progresses, the bonds are to be delivered to the company.

2d. That, on the 3d May, 1870, such election was held and resulted in favor of the subscription; and thereupon, on the 14th June, 1870, the County Court of Bates County made an order reciting—the certificate of the clerk, that of the election and assent, and that the Court was satisfied that two-thirds of the qualified voters of said township, who voted at the election, did vote in favor of the subscription; and ordering that $90,000 "be, and the same is hereby subscribed as stock to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company, in the name and behalf of Mount Pleasant Township Company," subject to all the terms, instructions and limitations of the order of the Court of April 5, 1870, and that the agent of the Court, to represent the interest of the county in the company, is authorized and directed to make the subscription on the stock books of said company, and in making the subscription he is ordered to have copied, in full, the orders made by the Court on said 5th of April, 1870, "*as the conditions on which the same is made, and that he report to the Court his acts in the premises aforesaid.*

3d. That under said order, Betts, the Commissioner appointed to subscribe to the Lexington, Chillicothe & Gulf Railroad Company, went to Lexington for the purpose, having with him a copy of the records of said County Court, but the company had no books on which the subscription could be made, by reason whereof the said Betts did not make the subscription; that said Betts then sought to withdraw or reclaim the papers he

had taken with him, but said company refused to allow him to do so; that he afterwards went to Lexington to make such subscription, but when he got there and saw the condition of the Board, he did not make the subscription, but returned, and on the 19th day of December, 1870, he made his report to the County Court, in which he reported that when he went to subscribe, he was informed by the Board of Directors in open session, that they did not then have a suitable book for that purpose, and reported to the County Court that on the first of August, 1870, he again went to make the subscription, but found the Board in such a condition, that in justice to the township and the County Court he ought not to make the subscription, and he did not, and that the bonds were not subscribed.

4th. That no subscription on the books of the company was in fact made, and no certificate of stock was in fact issued to said township prior to the consolidation afterwards mentioned, to wit: October 4, 1870.

5th. That on the 19th day of December, 1870, the County Court made its order approving the report of Betts, Commissioner, and on the 22d of December, 1870, made the following order: Ordered, that James M. Borenig be, and he is hereby appointed Commissioner "*for the sale of the bonds subscribed by Bates County to the Lexington, Chillicothe & Gulf Railroad Company*, on his entering into bonds for $180,000."

6th. On the 18th of January, 1871, said County Court made an order after reciting the submission of the proposition to the qualified voters of Mount Pleasant Township to subscribe $90,000 to the capital stock of the Lexington, *Chillicothe* & Gulf Railroad Company; that the amount was voted by the people and subscribed to the capital stock of said railroad company, and also reciting the consolidation, on the 4th of October, 1870, of that company with the former, Pleasant Hill Division of Lexington, Chillicothe & Gulf Railroad Company, under the name of the Lexington, *Lake* & Gulf Railroad Company, and that said company had a

right to receive all bonds and subscriptions made to either company. Said Court ordered the issue of said $90,000 in bonds to be made in behalf of Mount Pleasant Township, payable to the consolidated company in satisfaction of said original subscription, and that the bonds be delivered to Borenig, Commissioner, and the proceeds paid over by him to the consolidated company, "according to the terms and conditions of said subscription herein referred to," and immediately continues "*said James M. Borenig is hereby authorized to subscribe said stock to said railroad company.*

7th. That said Borenig, appointed on the 18th January, 1871, as commissioner, made said subscription on the books of the Lexington, *Lake* & Gulf Railroad Company (the alleged consolidated company) on the 18th day of January, 1871, which was accepted by *that company* and a certificate of stock then for the first time issued.

8th. That the Lexington, Chillicothe & Gulf Railroad Company was incorporated, under the general laws of Missouri, on the 25th August, 1869, to construct a railroad of about seventy-five miles in length, extending from Lexington, in Lafayette County, to Holden on the Pacific Railroad, thence through East Sugar Creek Township, in Cass County, thence southwardly in the direction of Butler, in Bates County, and thence southwardly to such point in Bates County as may be found most advantageous to connect said railroad with Fort Scott, Kansas.

9th. That the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company was incorporated, under the general laws of Missouri, on the *18th day of July*, 1870. The second section of which, states that the object of it was to construct a railroad and *eventually to consolidate with and form a link in, and be a part of the main line of said Lexington, Chillicothe & Gulf Company.* The length of the railroad was to be about 36 miles, commencing on the south boundary line of Lafayette County; thence southwestwardly near Lone Jack, in Jackson County, to Pleasant Hill, in Cass County; thence to such

point in or near the south boundary of Cass County as may be found most advantageous to intersect and *consolidate* with said Lexington, Chillicothe & Gulf Railroad Company.

10th. That on the 4th day of October, 1870, these two railroad companies filed their several acceptances in the office of the Secretary of State, of the provisions of the act of March 24, 1870, authorizing the consolidation of railroads.

11th. That on the 4th of October, 1870, the said Lexington, Chillicothe & Gulf Railroad Company, and the Pleasant Hill Division then filed their articles of consolidation in the office of the Secretary of State; wherein, after reciting the incorporation of the two companies, and that the Lexington, Chillicothe & Gulf Railroad Company had commenced and would soon complete the construction of that part of the road lying within Lafayette County, but found it impossible and impracticable to commence or complete that part of its road lying in Johnson County or Cass County, and that said Pleasant Hill Division had commenced the construction of its road, and that both companies having constructed parts of its railroad, desired the consolidation thereof, the articles of consolidation proceed to state, "and whereas the line or route of said railroad indicated in the charter of said Pleasant Hill Division of said Lexington, Chillicothe & Gulf Railroad Company, obviates the obstacles aforementioned, and connects the line of said Lexington, Chillicothe & Gulf Railroad Company in Bates County with that part of said last-mentioned road in Lafayette County, and which two lines of railroad, when completed and connected, will form in the main and whole one continuous line of railroad, and running in the whole as in the main in the same general direction of the line or road indicated in the articles of association of said Lexington, Chillicothe & Gulf Railroad," and that therefore the two roads do consolidate under the name of the Lexington, Lake & Gulf Railroad Company, upon the terms, stipulations and conditions named for the construction, maintaining and operating a railroad commencing at the City of Lexington and describing its route as indicated by the Lexington, Chillicothe & Gulf Railroad Com-

pany charter to the south line of Lafayette County: thence by the line of the Pleasant Hill Division "*to such point in Bates County, Missouri, as may be required and found most convenient for said consolidated company to demand receive and avail itself of the subscriptions heretofore voted to the capital stock of said original Lexington, Chillicothe & Gulf Railroad Company* by the Townships of Grand River and Mount Pleasant." The articles then go on at considerable length to provide that all the franchises of both companies should be vested in the consolidated company, with authority to receive all the subscriptions made to either company, reciting that said articles of consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said railroad companies, at a *meeting of the stockholders of said two several companies regularly called for that purpose.*

12th. That neither Mount Pleasant Township nor the individual stockholders or directors living in said township had any notice of the meeting of the stockholders which was held for the purpose of such consolidation, and at that time no stock had been issued to Mount Pleasant Township, and neither it nor such individual stockholders and directors were represented in the meeting, or participated in it.

13th. That on the 18th of January, 1871, the bonds set out in plaintiff's petition were issued to the Lexington, Lake & Gulf Railroad Company, (the alleged consolidated company,) one of which bonds is as follows, (page 30. printed record:)

No. 56. BOND. $1,000.

UNITED STATES OF AMERICA,

STATE OF MISSOURI, COUNTY OF BATES.

Issued pursuant to articles of consolidation in payment of stock due the Lexington, Lake and Gulf Railroad Company, consolidated October 4th, A. D., 1870.

Know all men by these presents, that the County of Bates, in the State of Missouri, acknowledges itself indebted and firmly bound to the Lexington, Lake & Gulf Railroad Company in the sum of one thousand dollars, which sum the said County of Bates, for and in behalf of Mt. Pleasant Township, therein promises to pay to the said Lexington, Lake & Gulf Railroad Company, or bearer, at the Bank of America, in the City and State of New York, on the 18th day of January, 1886, together with the interest thereon from the 18th day of January, 1871, at the rate of ten per centum per annum, which interest shall be payable annually, on the presentation and delivery at said Bank of America of the coupons of interest hereto attached.

This bond being issued under and pursuant to an order of the County Court of Bates County, by virtue of an act of the general assemby of the State of Missouri, approved March 23rd, 1868, entitled, "An act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people, taken May 3d, 1870, as required by law, upon the proposition to subscribe ninety thousand dollars to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company, and which said railroad company last aforesaid, and the former Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company were, on the 4th day of October, 1870, consolidated, as required by law, into one company, under the name of the Lexington, Lake & Gulf Railroad Company, and which said last-named railroad company, as provided by law, and under the terms of said consolidation thereof, possesses all the powers, rights and privileges, and owns and controls all the assets, subscriptions, bonds, moneys and properties, whatever, of the two said several companies forming said consolidation, or either one of them.

In testimony whereof the said County of Bates has executed this bond by the presiding justice of the County Court of said county, under the order thereof, signing his name hereto, and the Clerk of said Court, under the order thereof, attesting the same and affixing the seal of said Court.

This done at the City of Butler, County of Bates, the eighteenth day of January, A. D., 1871.

B. H. THORNTON,

Presiding Justice of the County Court of Bates Co., Mo.

{ County Court of [SEAL] Bates Co, Mo. }

Attest; W. J. SMITH,

Clerk of the County Court of Bates Co, Mo.

14th. That the plaintiffs became the holders of all the bonds and coupons in suit before maturity, and for value, without actual notice of the facts pleaded in defence to said bonds, or any notice of defects in the issue of said bonds, except such as they were bound in law to take notice of, and such as the face of the bonds imparted to them.

15th. That said Lexington, Lake and Gulf Railroad has been graded in part but never completed.

16th. The lines and routes of the two original companies and of the alleged consolidated company will appear from the map which forms a part of the finding, and appears at page 58 of the printed record.

Upon the pleadings and upon the special finding of facts, the Court gave judgment for plaintiffs for the amount of the coupons, $6,251.44, and the defendant sues out a writ of error to this Court.

At the time this subscription was voted and made, and when the bonds were issued, the following constitutional provision and laws were in force in Missouri:

1. CONSTITUTION MO., ART. 11, SEC. 14.

"The general assembly shall not authorize any county, city, or town to become a stockholder in or to loan its credit to any company, association, or corporation, unless *two-thirds of the qualified voters of such county*, city, or town, at a regular or

special election to be held therein, shall assent thereto." (Wagner's Statutes, Ed. 1872, p. 62.)

2. The Township Aid Act.

"Whenever twenty-five persons, tax-Payers and residents in any municipal township for election purposes in any county in this State, shall petition the County Court of such county, setting forth their desire as a township to subscribe to the capital stock of any railroad company in this State, building or proposing to build a railroad into, through, or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire it made, it shall be the duty of the County Court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made; which election shall be conducted, etc., etc; and if it shall appear from the returns of such election that not less than two-thirds of the qualified voters of such township, *voting at such election*, are in favor of such subscription, *it shall be the duty of the county court to make such subscription* in behalf of such township, according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscriptions, the County Court shall issue such bonds in the name of the county, with coupons, etc. (Wagner's Stat., p. 313, sec. 51; Laws of Mo. 1868, p. 92.)

3. The Railroad Consolidation Act.

"Any two or more railroad companies in this State existing under either general or special laws, and owning railroads constructed wholly or in part, which when completed and connected will form in the whole or in the maine one continuous line of railroad, are hereby authorized to consolidate in the whole or in the main, and form one company owning and controlling such continuous line of road, with all the powers, rights, privileges, and immunities, and subject to all the obligations and liabilities to the State or otherwise, which belonged to or rested upon either

of the companies making such consolidation. In order to accomplish such consolidation, the companies interested may enter into contract, fixing the terms and conditions thereof, which sh all first be ratified and approved by a majority in interest of all the stock held in each company or road proposing to consolidate, at a meeting of the stockholders regularly called for the purpose, or by the approval in writing of the persons or parties holding and representing a majority of such stock: * * * * *Provided, however,* that the foregoing provisions of this section shall not be construed to authorize the consolidation of any railroad companies or roads, except when, by such consolidation, *a continuous line of road is secured running in the whole or in the main in the same general direction*, and provided that it shall not be lawful for said roads, to consolidate in the whole or in part, when by so doing, *it will deprive the public of the benefit of competition* between said roads, *and in case any such railroad companies shall consolidate or attempt to consolidate their roads contrary to the provisions of this act such consolidation shall be void*, and any person or party aggrieved, whether stockholders or not, may bring action against them in the Circuit Court of any county through which such road may pass, which court shall have jurisdiction in the case, and power to restrain by injunction or otherwise, etc. (Act of March 24, 1870; Wagner's Stat., 314, sec. 56; Laws of Mo., 1870, p. 98.)

Under the Township Aid Act the County Court was authorized to issue bonds on behalf of any township in its county to pay for stock subscribed to a railroad company, provided the subscription was first sanctioned by a vote of the people of the township. The bonds were issued in the name of the county, purporting on their face to be the promise of the county. They were issued in this form, because at that time townships in Missouri had not been endowed with corporate capacity, and had no separate governing body to administer their affairs. They were simply so much of the territory of the county as was included within congressional township lines. The bonds, however, constituted no obligation of the county; the holder's only claim is against the township,

which alone is liable to be taxed to pay them. This was the effect assigned them, very soon after the passage of the act, in State *vs.* Linn County Court, 44 Mo., 504. Accordingly it has been the practice in suits upon such bonds to enter judgment against the county, with a clause limiting its enforcement to the township.

ASSIGNMENT OF ERRORS.

The said plaintiff in error, defendant below, now comes and says there is manifest error in said proceedings, and for grounds of error, assigns the following, to wit:

First. In that upon the pleadings and upon the facts in said cause, as found, the Court rendered a verdict in favor of plaintiff, and entered judgment in favor of plaintiff.

Second. In that upon the pleadings in the cause, and upon the facts in said cause, as found by the Court, the Court did not find a verdict and enter judgment for defendant.

BRIEF.

As has been stated in the statement of the case, the cause of action sued on here are coupons upon bonds issued by Bates County, in behalf of Mount Pleasant Township, part of the same issue as those upon which the coupons in the case of Harshman *vs.* Bates County, (92 U. S. p. 569), were issued. That case came up to this Court upon a certificate of division of opinion between the judges of the Circuit Court, upon a demurrer to the petition and judgment thereon in favor of defendant. While that case was on its way to this Court, the plaintiffs in this case, thinking that the cause of Nugent *vs.* The Supervisors, 19 Wall, 341, which had been decided subsequently to the Harshman case, was favorable to their views, proceeded to try their cause at a subsequent term, and succeeded in convincing the Court that this Court had, in that case, established principles which would compel a judgment in favor of the plaintiffs in this case, and accordingly the Circuit Court gave judgment in favor of the plaintiffs

and against Bates County, in a suit upon coupons on the same issue of bonds as in the Harshman case, and the defendant now seeks for a reversal of the judgment below.

Now, although the Court in the opinion pronounced in the Harshman case, had, as one of the grounds for affirming that judgment, decided that the bonds were void for want of constitutional power in the county to issue such bonds as trustee, and though this Court did, in the subsequent cause of Cass County *vs.* Johnson, decided at this term, upon fuller argument, receded from that position; yet the other ground upon which the decision in the Harshman case was based, to-wit—that no power existed in the County Court, as trustee for the township, to make, in behalf of such township, a subscription to a railroad which they had never authorized—has not only remained entirely unshaken and unchallenged, but is re-affirmed by subsequent cases.

So, that in truth, all that we need do in this case, to procure a reversal, is to show that the facts admitted by the pleadings, and found by the Court in this case, were the same as admitted by the demurrer in the Harshman case, upon the truth of which, the decision by this Court in that case was based.

We now expect to be able not only to show that the facts as presented and found in this case are substantially the same as admitted in the petition in the Harshman case, but wherever there is any variance or any addition, they tend more strongly to fix the utter worthlessness of the attempted subscription and the invalidity of the bonds.

I.

The findings of the Court in this case, place it beyond doubt that there never was any subscription of stock to the railroad company in whose favor authority was given by Mount Pleasant Township to the County Court to subscribe for.

The petition of tax payers of Mount Pleasant Township to the County Court of Bates County set forth their desire to have

said township subscribe $90,000 to the capital stock of the Lexington, *Chillicothe* & Gulf Railroad Company, and thereupon the County Court ordered an election to ascertain whether the tax payers would vote that such subscription should be made, upon certain conditions and limitations, and upon this proposition it was that the tax payers of Mount Pleasant Township voted on the 3d May, 1870.

a. The authority, as given to subscribe by the township to the County Court, was an authority to subscribe to the Lexington, *Chillicothe* & Gulf Railroad Company and an authority *only* to subscribe to that company when it should obligate itself to do certain things. Whether that company would agree to that condition could not be known, but the power to make it was dependant on the performance of the condition.

b. The County Court, by its order of the 14th of June, 1870, to its agent and commissioner, Betts, instructed him to make the subscription on the stock book of the company, upon the conditions and subject to all the terms, instructions and limitations of the order of the 5th of April, 1870, which was the proposition voted for, and the only authority conferred,

c. The Lexington, *Chillicothe* & Gulf Railroad Company neither received the subscription, allowed it to be made, or agreed to its conditions for the very good and sufficient reason, (as will be evident from the senseless excuse given for not allowing the subscription and agreeing to its terms), that the company did not desire nor intend to have the subscription made. If the subscription should be made, then Mount Pleasant Township would be entitled to receive $90,000 of the stock of that railroad, and that amount of stock would have probably prevented what was an annihilation under pretense of a consolidation with another road.

d. The Court below finds that the agent reported to the County Court that he neither made any subscription nor was allowed to make one, and that in fact no subscription was ever made to the original railroad company during its existence. (See page 41 of record.)

In the petition in the Harshman case, the authority, as given by the vote of the township to the County Court to subscribe, was stated as absolute; here it is proved to have been conditional.

It appears more clearly in this case than in the Harshman case, that no subscription had been made when the Lexington, Chillicothe & Gulf Railroad Company ceased to exist by its absorption into this supposed consolidated company.

II.

It as fully appears in this case as in the former, the attempted subscription as made by the County Court on behalf of Mount Pleasant Township, was made to a different railroad company from that voted for and authorized.

When the vote was taken, there was no such railroad corporation in existence as the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company. It was not until the 18th day of July following, that this company was formed, and in view of that, the object of its formation is stated in its charter to be "eventually to consolidate with and form a link in and be a part of the *main line* of the Lexington, Chillicothe & Gulf Railroad Company, and of what afterwards happened, it is very clear why it was formed. It is termed a *branch* of a railroad, and it begins at the same initial point as the principal, and runs in the same general direction for about thirty-six miles, until the branch and principal line would come together, being nowhere further apart than 15 miles at the furthest point of divergence. The line of the railroad which the township voted to aid, run through Holden, with which that township wished to be in direct railroad connection. The line of this railroad, incorporated on the 18th of July, two and a half months after, was one that was not advantageous to that township, and for which nobody ever had the hardihood to ask aid. But it was supposed, by the railroad manipulators, that as soon as a favorable vote was obtained for one road, it could be made available for another. Their object was to obtain bonds, not to

build railroads, and so they set to work to get a charter for a company for a substantially parallel line between two points, to that of the one to which aid was voted, and having obtained it, they set to work in flagrant disregard of the plain provisions of the law, and for a fraudulent purpose to attempt consolidation of those two companies. This was attempted to be done on the 4th of October, 1870, two and a half months after this railroad company, called the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, was formed. This consolidation could only have been done under the provisions of the law of the State, and this act (Wagner Sratutes of Mo., 314, sec. 56) expressly provides that it shall not be construed to allow any such consolidation, except when, by virtue of "*such consolidation*, a continuous *line of road is secured, running in the whole or in the main in the same general direction*," and also that it shall not be lawful for such consolidation to be made between two railroad companies "when it will deprive the public of the benefit of competition" between roads, and further, providing that any consolidation contrary to the provisions of the act shall be void.

Here were two causes why these roads could not consolidate. The roads did not form a continuous line in the same general direction, and they were substantially parallel and competing lines. This will be apparent by the plat of the two lines at page 58 of the record. On the 4th of October, 1870, that organization was effected so far as filing the papers and taking the steps named in the consolidation act, under the name of the Lexington, *Lake* & Gulf Railroad Company.

It professed to be a consolidation of two railroads, whereas it was an abolition and annihilation of that portion of one with which the other formed a competing line, and the portion of the original line thus annihilated was the very portion to obtain which the aid was voted by the township.

But whether this consolidation be good or not, it is not to the stock of that railroad company that the township voted to

subscribe. It was a different company with different stockholders, upon a different line, having different resources, having different relations to Mount Pleasant Township, and different bearings upon its prosperity—it might, in the one case, in the judgment of the tax payers of that township, give promise of being a successful enterprise, and in the other case of being a disastrous one.

But the agents of Mount Pleasant Township, the County Court, undertook to act for them, and finding that it would not be allowed to subscribe to that company, to which its principal had given it the authority, concluded that it would subscribe for its principal to that company to which its principal had never given it any authority, and so on the 18th of January, 1871, undertook to make the subscription to this alleged consolidated road of the Lexington, *Lake* & Gulf Railroad Company.

III.

The County Court, in making that subscription, was acting only as the agent of the township, and had only such power and authority as the vote of the township by its terms conferred upon it.

The county was not contracting as a municipality, but by the terms of the act the County Court was authorized to act in behalf of, and agent for, the township, and had just such powers in this matter, and no more, as the township, by the authority contained in the terms of its vote, choose to confer.

That the County Court was only the agent of the township was fully recognized by this Court when the legality of these bonds was before it in the Harshman case, (92 U. S. 569). After stating that the validity of the subscriptions was resisted on the ground that the township voted to subscribe to one company and the County Court subscribed to another, and that this subscription was sought to be justified on the ground that the former company became consolidated with another, thus forming a third, to whose

stock the subscription was made, the decision continues, "and it is contended that this provision of the law justified the County Court in making the subscription without further authority from the people of the township. But did not the authority cease by the extinction of the company voted for? No subscription had been made—no vested right had accrued to the company."

And in the subsequent case of Scotland County *vs.* Thomas, 94 U. S. 691, the Court say, speaking of the powers of this very County Court: "The County Court was regarded as being the mere agent of the township, having no discretion to act beyond the precise terms of the power given. The powers of an agent or attorney, authorized to act for another, are very different from those possessed by a person acting in his own behalf."

IV.

The authority, as given by the vote of Mount Pleasant Township to the County Court, was, under certain conditions, to subscribe to the stock of the Lexington, *Chillicothe* & Gulf Railroad Company, and to no other, and that was not an authority for that Court to subscribe to the stock of a road which not only was not the road voted for, but had no existence as a corporation at the time the vote was taken.

At the risk of repetition we recall the fact that when the vote was taken the corporation in favor of subscribing to which the vote was given, alone existed; that it was not for about two and a half months that the railroad for whose line the subscription was finally made was created, and not till two and a half months more that the alleged consolidation was made, to which consolidated roads the subscription was attempted to be made.

That this consolidation, (if it be conceded to be valid and effectual), operated as a complete revocation of the power of subscription, has been repeatedly decided by this Court. In the former case of Harshman, the Court, speaking of the effect of such consolidation, says:

"The case of the *State* vs. *Linn County Court*, *supra*, decides, that if the County Court refuses to issue bonds after making a subscription, a *mandamus* will lie to compel it to issue them. There the authority had been executed and a right had become vested. But as long as it remains unexecuted, the occurrence of any event, which creates a revocation in law, will extinguish the power. The extinction of the company in whose favor the subscription was authorized, worked such a revocation. The law authorizing the consolidation of railroad companies, does not change the law of attorney and constituent. It may transfer the vested rights of one railroad company to another, upon a consolidation being effected, but it does not continue in existence, powers to subscribe for stock given by one person to another, which, by the general law, are extinguished by such a change. It does not profess to do so, and we think that it does not do so by implication."

In the case of Scotland County *vs.* Thomas, before referred to, this Court, speaking of the effect of a consolidation upon authority conferred prior to the consolidation but not exercised, say:

"Had the charter of the Alexandria & Bloomfield Railroad Company authorized foreign corporations to subscribe to its stock, (supposing that by the general law of Missouri they had no such power), they would undoubtedly have retained that power after the consolidation, *it being in their discretion to exercise it or not*, but if any such foreign corporation had, before the consolidation, sent an order to a firm in St. Louis to subscribe stock for it in the original company, the firm could not have made the subscription after the consolidation, without consulting their principals. Such a material change of circumstances would have rendered the subscription an excess of the power given to them. Authority given to a person to be exercised for his own benefit, and at his own discretion, may be exercised by him under changes of circumstances that would amount to a revocation of a power given to *an attorney*, unless it expressly conferred discretion."

So the Court held in the case of Marsh *vs.* Fulton County, 10 Wall, 676, in relation to a corresponding change in the

subscription from the railroad company in question, in favor of which the vote was given, as thus stated at p. 252 in the case of Nugent *vs.* the Supervisors, in 19 Wall.

"In that case, it appeared that the people of the county voted in November, 1853, in favor of a subscription of stock for the Mississippi and Wabash Railroad Company and in April, 1854, the board of supervisors of the county ordered the clerk to make the subscription. It was not, however, then made. Subsequently, in 1857, the Legislature made fundamental changes in the organization of the company, dividing it substantially into three companies, with a distinct governing body for each, and with three classes of stockholders. It was after this that the subscription was made, and it was made—not for the stock of the Mississippi and Wabash Railroad Company, but for the stock of one of the divisions. Necessarily, therefore, we hold that there is no authority to make the subscription which was made; that it had not been approved by the popular vote, and, hence, the bonds issued in payment of it were invalid."

That the case of Nugent *vs.* Supervisors, 19 Wall, 252, held no different doctrine, we had occasion to show in case of Harshman *vs.* Bates County, and as no reference is made in the decision in the last-named case to the former, it is conclusive that such was the construction given to the decision in the former case, and it is not necessary now to consider it.

Unless it can be shown that the Supreme Court of the United States has, to some extent, qualified the views thus given, and given, too, in a case in which the legality of the same issue of bonds was in question as in this case, why should we pursue this part of the enquiry further? As we have shown, instead of any doubt having been thrown upon *this* ground of the decision in the Harshman case, in subsequent cases, it has been reaffirmed and strengthened, and the decisions rendered at the present term have in this respect in no degree impaired it, if (as in Cass County *vs.* Jordan) they have not rather confirmed it.

The former decision, upon the legality of this same issue of bonds, must control this case, unless it can be shown that in that

case some facts were omitted which were necessary for a fair determination of the case, or some material facts now appear in this case to be different from what they were assumed to be in that case. We have, we think, shown that the facts upon which, as assumed, that decision was based, are here exhibited in a light showing more clearly the illegality and invalidity of this attempted subscription than in that case. If this be so, it is hardly necessary for us to say.

V.

That no question can arise here as to any protection claimed for the plaintiffs on the ground of being *bona fide* purchasers of these bonds for value without notice, as by the recitals upon the bonds themselves they were affected with notice of every material fact affecting the validity of the bonds.

On the face of the bonds it is recited—

1. That the bonds are issued by Bates County for and in behalf of Mount Pleasant township.

2. That they were issued under and pursuant to an order of the County Court of Bates County, in virtue of the act of the General Assembly approved March 23, 1868, entittled "An act to facilitate the construction of railroads in the State of Missouri.

3. That they were issued in payment of stock, not to the company to which authority was given to subscribe by vote, but to the Lexington, Lake and Gulf Railroad, consolidated October 4, 1870.

4. That the order of the County Court of Bates County, under which the bonds were issued, was authorized by a vote of the people of Mount Pleasant Township taken May 3, 1870, upon a proposition to subscribe $90,000 to the capital stock of the *Lexington, Chillicothe & Gulf Railroad Company.*

5. That the said road (as to the subscription to whose stock the said vote was taken on the 3d day of May, 1870,) was, on the 4th day of October, 1870, consolidated with the former Pleasant

Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, into one company, under the name of the *Lexington, Lake & Gulf Railroad Company.*

So that the purchaser of the bond could not, however much he might desire to, shut his eyes; but took it with a full knowledge of how, for what, under what circumstances and under what laws it was claimed to have been issued.

And so was the decision of this Court in the Harshman case, as to the same bonds, where it is said: "Sufficient notice of these objections is contained in the recital of the bonds themselves, to put the holder on enquiry."

VI.

The action of the County Court in levying and collecting a tax from the township for the purpose of paying the interest upon the bonds, and the application of it to the part payment of one year's interest, cannot validate the bonds if they are illegal, nor estop the county for contesting their legality, more especially as the purchasers of the bonds are affected with notice of all the facts on which their validity depends by the recital on the face of the bonds.

The agent who has exceeded its authority, in attempting to bind its principal, is by means of levying and collecting a tax upon this same principal which it has no power to resist, supposed to confirm this abuse of power, and this shameless fraud upon the people of this township, in fact as well as law, where no road was built and none intended to be built, is supposed to be successful, because the people of the township were in no situation to prevent their money from being taken from their pockets to pay interest upon these illegal bonds.

Where there was on the face of the bonds no recital to put the purchaser upon enquiry, in the case of Marsh *vs.* Fulton County, this Court held that the bonds in the hands of an innocent purchaser without notice, were void, and this when the county had been paying the interest on the bonds for years. In

this case there can be no such innocent holder, as by the recital on the face of his bond, he is affected with the knowledge of every fact effecting its validity.

The fact that a tax for the payment of interest had been collected by County Court from Mount Pleasant Township, and the coupons on these bonds for six months' interest had been paid, appeared on the face of the petition in Harshman case, but the Court paid no attention to that circumstance and held it no estoppel.

As in this case the Court below affirmed the validity of the bonds and gave judgment for the plaintiff, we submit that that judgment must be reversed.

Glover & Shepley
for Appt

IN THE

SUPREME COURT OF UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE WESTERN DISTRICT OF MISSOURI.

October Term, 1877.

COUNTY OF BATES,

PLAINTIFF IN ERROR,

vs.

JONATHAN WINTERS, ET AL.

Statement, Assignment of Error, and Brief for Plaintiff in Error by

GLOVER & SHEPLEY.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1877.

No. 210.

THE COUNTY OF BATES,

PLAINTIFF IN ERROR.

vs.

VALENTINE WINTERS *et al.*,

Error to the Circuit Court for the Western District of Missouri.

STATEMENT AND BRIEF FOR DEFENDANTS IN ERROR.

T. K. SKINKER,
Counsel for Respondents.

Chas. E. Ware & Co., Printers, cor. Fifth and Chestnut Streets.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1877.

No. 210.

THE COUNTY OF BATES,

PLAINTIFF IN ERROR.

vs.

VALENTINE WINTERS *et al.*,

Error to the Circuit Court for the Western District of Missouri.

STATEMENT AND BRIEF FOR DEFENDANTS IN ERROR.

This is a suit upon 57 coupons of $100 each. The bonds are township bonds, issued under the Missouri act, entitled "An act to facilitate the construction of railroads."

A jury having been waived, a trial was had before the court (Dillon and Krekel, J J.), resulting in a judgment for the plaintiffs. There was a special finding of the facts, substantially as follows:

1. On the 5th day of April, 1870, the county court of Bates County, Missouri, made an order for an election to take the sense of the qualified voters of Mount Pleasant

Township, in said county, as to whether said township should subscribe ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company. (Printed Record, p. 38.)

2. On the 3d day of May, 1870, such election was held pursuant to such order, and resulted in favor of the subscription; and thereupon, on the 14th day of June, 1870, the said county court made the following order, subscribing stock to said railroad company:

Now, at this day, is filed in open court the certificate of the clerk of this court, showing that on the 3d day of May, 1870, an election of the qualified voters of Bates County, State of Missouri, was held to obtain the assent of said voters to subscribe the sum of ninety thousand ($90,000) dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, in pursuance of an order of this court submitting a proposition to subscribe said sum, which order was made on the 5th day of April, 1870, and the court being satisfied that two-thirds of the qualified voters of said township, who voted at said election, did vote in favor of said subscription, and have given their assent thereto:

It is therefore ordered by the court, that THE SUM OF NINETY THOUSAND ($90,000) DOLLARS BE, AND THE SAME IS HEREBY, SUBSCRIBED AS STOCK TO THE CAPITAL STOCK TO THE LEXINGTON, CHILLICOTHE AND GULF RAILROAD COMPANY, in the name and behalf of Mount Pleasant Township, in said county, subject to and in pursuance of all the terms, restrictions and limitations of the petition of tax-payers and residents of said township heretofore filed, and the order of this court thereunder, so made as aforesaid, on the 5th day of April, 1870, and that the agent of this court to represent the interest of this county in said railroad company, be and he is hereby authorized and directed to make said subscription on the stock-books of said company; and in making said subscription he is ordered to have copied in full the orders made by this court, on said 5th day of April, 1870, as the conditions on which the same is made, and that he report to this court his acts in the premises aforesaid (p. 40.)

3. Under said order A. L. Betts, the commissioner therein appointed to subscribe to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, went to Lexington, Missouri, for that purpose, carrying with him a copy of the records of said county court, for the purpose of showing his authority to act in the premises. The company then had no books on which the subscription could be made, by reason whereof the said Betts did not make the subscription.

Thereupon the said Betts sought to withdraw or reclaim the papers he had taken with him, BUT THE SAID COMPANY REFUSED TO ALLOW HIM TO DO SO. Said Betts again went to Lexington to make such subscription, but after he got there and saw the condition of the board he did not make the subscription, and afterwards made a report to the said county court, as follows:

That three days after his appointment as such commissioner, he proceeded to the city of Lexington, and there found the board of directors in open session, and fully identified himself as such commissioner, by the presentation to said board of directors of proper certificates, attested by your clerk under his official seal.

That your said commissioner advised said board of his intention to subscribe bonds to the amount of one hundred and thirty thousand dollars for Bates County, in behalf of Mount Pleasant and Grand River Townships, and was informed by said board of directors that they did not then have a suitable book for that purpose. Whereupon your commissioner placed all the necessary papers in the hands of the secretary of said company, that he might spread them on the books, so that your commissioner might, on another occasion, more quickly do the matter.

On or about the first day of August following, your commissioner went to the city of Lexington for the purpose of subscribing said bonds; but, on coming before the said board, he found them quarreling among themselves, and in a bad condition generally; and further that they had so shaped the said board, and as your commissioner believed un-

lawfully, that Bates County was left without a guarding element in the said board of directors; and your commissioner was of opinion that, in justice to the citizens of said township, and to your honorable body, he should not make such subscription then, and he did not.

Soon after this your commissioner was informed that the said company had, as they claimed, merged themselves into another company, and your commissioner could not, therefore, make such subscription without further instructions from your honorable body.

The bonds of said township are therefore not subscribed" (p. 41.)

4. No subscription of stock *on the books of the company* was in fact made, and that no certificate of stock was in fact issued to said township, prior to the consolidation hereinafter mentioned, to-wit: the 4th day of October, 1870 (p. 41).

5. On the 19th day of December, 1870, the County Court appointed one Boreing commissioner to make sale of the bonds that had been previously "*subscribed to the Lexington, Chillicothe and Gulf Railroad Company*," requiring him to give a bond in the sum of $180,000 for the faithful performance of his duties (pp. 41-42).

6. On the 18th day of January, 1871, the County Court made an order, which, after reciting (1) the submission to the voters of Mt. Pleasant Township, of the proposal to subscribe $90,000 to the capital stock of the Lexington, Chillicothe and Gulf Company, (2) that said amount of bonds was voted by the people *and subscribed to the capital stock of said company*, (3) the consolidation on the 4th day of October, 1870, as hereinafter set forth, (4) the right to demand and receive said bonds thereby devolved on the consolidated Lexington, Lake and Gulf Company, proceeds to direct the issue of ninety bonds of $1,000 each, payable to the Lexington, Lake and Gulf Company or bearer, *in payment of said original subscription*, and authorizes said Boreing to subscribe said stock to the Lexington, Lake and Gulf Company (pp. 42-43).

7. Boreing made said subscription on the books of the Lexington, Lake and Gulf Railroad Company on or about the 18th day of January, 1871, which was then accepted by the Lexington, Lake and Gulf Railroad Company, and a certificate of stock then for the first time issued (p. 43).

8. The Lexington, Chillicothe and Gulf Railroad Company was incorporated under the general laws of Missouri, on the 25th day of August, 1869 (p. 43.)

9. The Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was incorporated under the general laws of Missouri on the 18th day of July, 1870 (p. 45).

10. These two companies on the 4th day of October, 1870, filed with the Secretary of State of Missouri, their several acceptances of the provisions of the law in relation to the consolidation of railroads (p. 49).

11. And also on the same day, they filed articles of consolidation with the Secretary of State (p. 49).

Among the stipulations of this contract were the following:

Fourth. That all certificates of stock of the two several companies shall be called in, and new certificates of stock shall be issued to those owning and entitled to the same, in lieu of the original stock, in the name of the new consolidated company, and all persons who are or may be entitled to certificates of stock in said two several companies, and not having yet received the same, shall have such certificates of stock issued to them upon satisfactory proof and demand in the name of the new consolidated company.

Fifth. Immediately upon the consolidation of said two several companies, as provided by law, said new or consolidated company to have and shall be empowered and possessed of all and singular the powers, rights, privileges and immunities, and subject to all the obligations and liabilities to the State, with contractors, engineers, or otherwise, which

belonged to or vested in or rested upon either of the said two several companies hereto making this consolidation and signing this agreement and articles; and said new or consolidated company to become and constitute one company under the name of the Lexington, Lake and Gulf Railroad Company. * * * * * * * * *

And further, said new or consolidated company to have and possess full and complete power, authority and right in law or equity to demand, sue for, recover, receive, and receipt for all and every such sums as may have been, and are now or may be subscribed to, voted or pledged to the capital stock of the said two several railroad companies, or either one of them, by individuals, counties, townships, towns, or otherwise, so that said consolidated company shall have full power and authority to have, use, and to own all and every the assets of said two several companies, or subscriptions made or to be made, whether absolute or conditional, to the capital stock of said companies, or either one of them, as fully and to all intents or purposes as either of said railroad companies might or could have done and performed had these articles of consolidation never have been concluded and entered into (p. 55).

12. Neither Mt. Pleasant Township nor the individuals, stockholders and directors living in said township, had any notice of the meeting of the stockholders which was held for the purpose of effecting such consolidation, and at that time no stock had been issued to Mount Pleasant Township, and neither it nor such individual stockholders and directors were represented in the meeting held for such purpose of consolidation, nor did they in any manner participate therein (p. 57).

13. The plaintiffs' bonds were issued under the order of the 18th of January, 1870, to the Lexington, Lake and Gulf Company (p. 57).

14. The plaintiffs became the holders of all the bonds and coupons in suit before maturity and for value, without actual

notice of the facts pleaded in defense to said bonds, or any notice of defects in the issue of said bonds, except such as they were bound in law to take notice of, and such as the face of the bonds imparted to them (p. 57).

15. Said Lexington, Lake and Gulf Railroad has been graded in part, but never completed (p. 57).

The defenses set up in the answer, are: 1st, that the bonds were voted by the township to one company, and the County Court, without authority of law, issued and delivered them to another; 2d, that the consolidation was irregularly and illegally made and is void in law. This latter defense was not insisted on at the trial.

The statute under which the consolidation took place is to be found in Wagner's Stats. of Mo., (1872) p. 314, sections 56-57.

BRIEF.

I.

The transfer of the subscription and the issue of the bonds to the Lexington, Lake and Gulf Company, was lawful.

The special finding shows, that in pursuance of the vote taken May 3d, 1870, the County Court on behalf of Mount Pleasant Township, on the 14th day of June, 1870, made an order of record subscribing $90,000 to the Lexington, Chillicothe and Gulf Company. This order is, itself, obligatory as a subscription without actual subscription on the books of the company, and without formal acceptance by the company. The Justices of Clark Co. vs. P., W. & K. R. Turnpike Co., 11 B. Monroe, 143.

It is therefore of no consequence that "no subscription of stock on the books of the company was, in fact made * * * prior to consolidation," as shown by the special finding. That it was regarded by the County Court as binding is shown by their orders of December 19th, and January 18th, in which the bonds are spoken of as having been previously "subscribed to the Lexington, Chillicothe and Gulf

Railroad Company," and are ordered to be "issued" "in payment of said original subscription." That it was so regarded by the company, and was accepted by them is manifest from their refusal to permit Betts, the county commissioner, to withdraw from their custody the copies of the orders of the County Court, which he had brought with him to Lexington to transcribe on the stock-book of the company. This occurred on the 17th day of June, three days after the order of subscription was made, and nearly four months before this company became consolidated with the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Company. This latter, though called "The Pleasant Hill Division," was in fact a distinct corporation. Even if acceptance were not shown, it would be presumed, the grant being beneficial to the company.

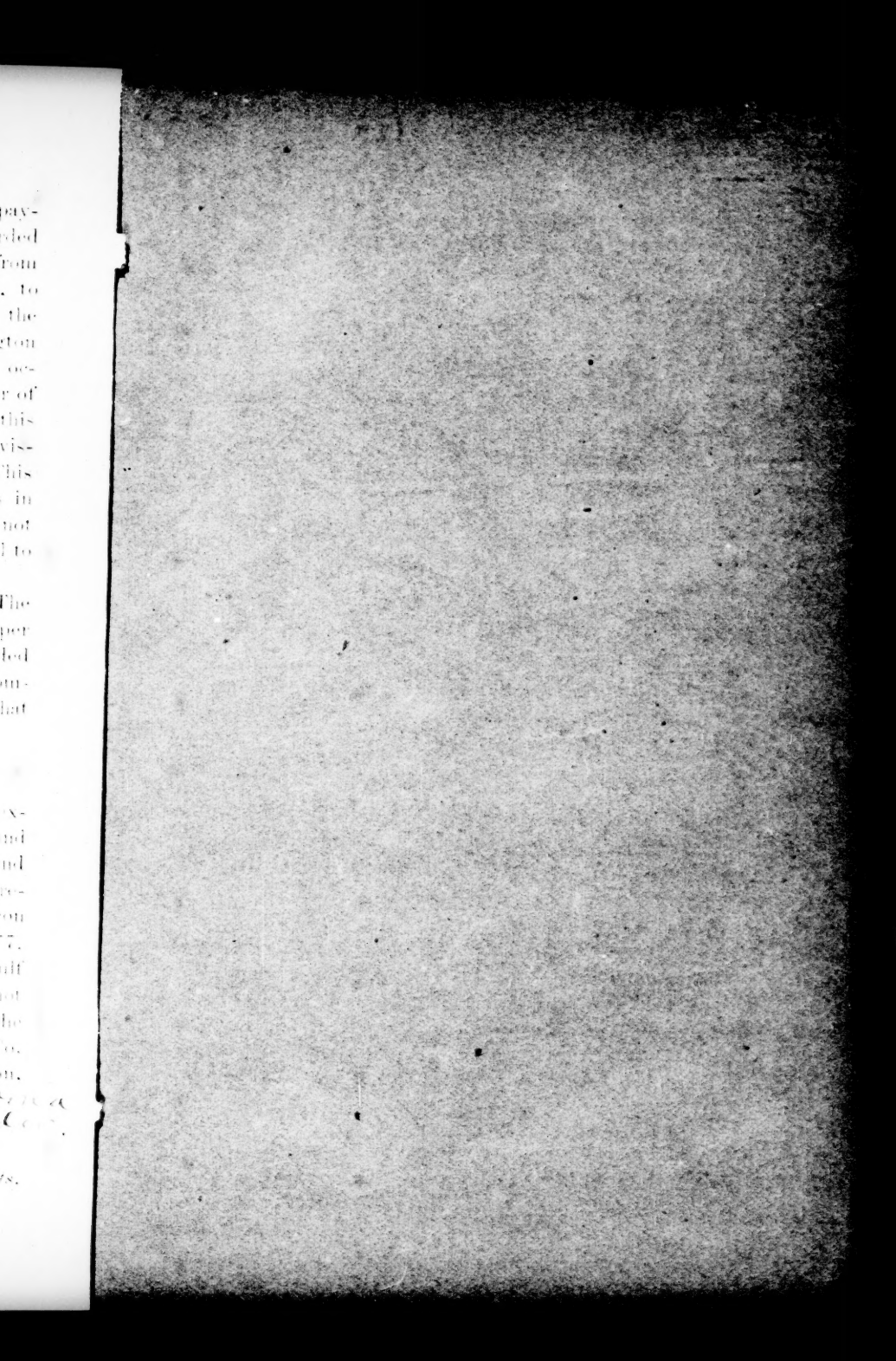
The consolidation took place October 4th, 1870. The subscription having been previously made to the proper company, and the contract of consolidation having provided for the transfer of all subscriptions to the consolidated company, the county court was bound to issue the bonds to that company. Nugent vs. Supervisors, 19 Wall., 251.

II.

The claim that the consolidation, which brought the Lexington, Lake and Gulf Company into being, was irregularly and illegally made, amounts to a plea of *nul tiel corporation*, and is inadmissible in this action. Kayser vs. Trustees of Bremen, 16 Mo., 99; Smith vs. Clark Co., 54 Mo., 81; Macon County vs. Shores, decided by this Court, December, 1877.

Having contracted with the Lexington, Lake and Gulf Company, as a corporation, Mount Pleasant Township cannot now deny its corporate existence. Camp vs. Byrne and the Packet Company, 41 Mo., 525; Farm. and Merch. Ins. Co. vs. Needles, 52 Mo., 18; O. & M. R. R. Co. vs. McPherson, 35 Mo., 13. *Et hoc omnia cum gratia &c.*

Respectfully submitted.

T. K. SKINKER,

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